

TOWN COUNCIL

MEETING

PACKET

December 2, 2019



Town Council

Agenda
Monday, December 2, 2019
Town Hall, Council Chambers
450 So. Parish Avenue
7:00 PM



MISSION STATEMENT-*"The mission of the government of the Town of Johnstown is to provide leadership based upon trust and integrity, commitment directed toward responsive service delivery, and vision for enhancing the quality of life in our community."*

Members of the audience are invited to speak at the Council meeting. Public Comment (item No. 5) is reserved for citizen comments on items not contained on the printed agenda. Citizen comments are limited to three (3) minutes per speaker. When several people wish to speak on the same position on a given item, they are requested to select a spokesperson to state that position. If you wish to speak at the Town Council meeting, please fill out a sign-up sheet and present it to the Town Clerk.

- 1) **CALL TO ORDER**
 - A) Pledge of Allegiance
- 2) **ROLL CALL**
- 3) **AGENDA APPROVAL**
- 4) **PROCLAMATIONS AND PRESENTATIONS**
- 5) **PUBLIC COMMENT (three-minute limit per speaker)**

*The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to have an item discussed or if there is public comment on those ordinances marked with an *asterisk. The Council member may then move to have the subject item removed from the Consent Agenda for discussion separately.*

- 6) **CONSENT AGENDA**
 - A) Town Council Meeting Minutes – November 18, 2019
 - B) Payment of Bills
 - C) 2nd Reading – Ordinance Number 2019-165, An Ordinance Amending Chapter 18 of the Johnstown Municipal Code to Adopt The 2018 Building Codes
 - D) 2nd Reading – Ordinance Number 2019-166, An Ordinance Amending Section 13-27 of the Johnstown Municipal Code Concerning Sewer Tap Fees for Multi-Family Residential Dwelling Units.
 - E) Consider Resolution 2019-26 Approve Final PUD Development Plan for Johnstown Farms Filing No. 3
 - F) Consider Johnstown Farms III Subdivision and Development Improvements Agreement
 - G) Consider Johnstown Farms III Water Sewer Service Agreement
- 7) **TOWN MANAGER REPORT**
- 8) **TOWN ATTORNEY REPORT**
- 9) **OLD BUSINESS**
- 10) **NEW BUSINESS**
 - A. **Public Hearing** – Thompson River Ranch Filing #10 Final Plat
 - B. Consideration for the Subdivision Development and Improvement Agreement (DA) and the Water and Sewer Service Agreement for Thompson River Ranch Filing No 10
 - C. **Public Hearing** – First Reading - Consider Ordinance 2019-167 Amending Article IV Johnstown Municipal Code
 - D. **Public Hearing** – An Oil and Gas Operator Agreement and Encroachment License Between the Town of Johnstown and Kerr-McGee Oil and Gas Onshore LP
 - E. Consider Resolution 2019-27 Budget Amendment
- 11) **EXECUTIVE SESSION**
- 12) **COUNCIL REPORTS AND COMMENTS**
- 13) **MAYOR'S COMMENTS**

14) **ADJOURN**



NOTICE OF ACCOMODATION

If you need special assistance to participate in the meeting, please contact the Town Clerk at (970) 587-4664. Notification at least 72 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to the meeting.

AGENDA ITEM 6A-G

**CONSENT
AGENDA**

- **Council Minutes – November 18, 2019**
 - **Payment of Bills**
- **2nd Reading – Ordinance number 2019-165, An Ordinance Amending Section 13-27 of the Johnstown Code to Adopt the 2018 Building Codes**
- **2nd Reading- 2019-166 An Ordinance Amending Section 13-27 of the Johnstown Municipal Code Concerning Sewer Tap Fees for Multi-Family Residential Dwelling Units**
- **Consider Resolution 2019-26 Approve Final PUD Development Plan for Johnstown Farm Filing No. 3**
- **Consider Johnstown Farms III Subdivision and Development Improvements Agreement**
- **Consider Johnstown Farms III Water Sewer Service Agreement**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: December 2, 2019

ITEM NUMBER: 6A-G

SUBJECT: The Following Items are Included in the Consent Agenda, which may be approved by a single motion approving the Consent Agenda:

- A) Town Council Meeting Minutes – November 18, 2019
- B) Payment of Bills
- C) *2nd Reading – Ordinance Number 2019-165, An Ordinance Amending Chapter 18 of the Johnstown Municipal Code to Adopt the 2018 Building Codes
- D) **2nd Reading – Ordinance Number 2019-166, An Ordinance Amending Section 13-27 of the Johnstown Municipal Code Concerning Sewer Tap Fees for Multi-Family Residential Dwelling Units.
- E) ***Consider Resolution 2019-26 Approve Final PUD Development Plan for Johnstown Farms Filing No. 3
- F) ****Consider Johnstown Farms III Subdivision and Development Improvements Agreement
- G) *****Consider Johnstown Farms III Water Sewer Service Agreement

* The Town has been operating and applying the various International Code Council (ICC) from 2006. The proposed regulation would bring the Town of Johnstown to the current codes that are available for adoption from the ICC. The codes that are presented and adopted will help insure better construction methods resulting in enhanced safety for those who occupy various structures. As part of the adoption, the Town's consulting building inspector conducted several listening and informational sessions earlier in the year to ensure that contractors who desired to attend were aware of the pending adoption of these codes. Appropriate public outreach attempts were made to communicate the changes in the codes prior to bringing this to Council formal adoption. *The Ordinance was revised from the first reading to provide that the effective date is January 1, 2020.*

** The proposed ordinance change presented to Council at this time is a modification of the Town's sewer tap fee for multi-family development. The Town has historically tied the sewer tap fee to the water tap size which is not an adequate methodology for determining the sewer tap fee simply because of the fact that the water tap size does not generally correlate to the wastewater flow generated. The proposed change would create a fee of \$2,640 on per multi-family unit basis. This figure is 50% of a single family dwelling unit.

***Resolution 2019-26, TF Johnstown Farms, LP submitted an application to the Town of Johnstown for approval of a Final Development Plan and Final Plat for Johnstown Farms Filing No. 3. The Planning and Zoning Commission held a public hearing on January 30, 2019 and recommended approval with conditions. On November 18, 2019, Town Council held a public hearing and approved the Final Plat with conditions: (1) Any unresolved comments from Town Staff, the Town Engineer and the Front Range Fire Rescue Fire Protection District shall be addressed prior to construction of any improvements; and The Town and the Owner shall execute a Water and Sewer Service Agreement prior to recordation of the Final Plat.

****The Development Agreement provided mirrors the initial document provided to the Council with the exception of the two items specifically requested in the document. The first addition is a notation in Exhibit B-3 which requests that the developer and the adjacent property owner to the east negotiate in good faith to try and find a resolution regarding additional sound mitigation efforts on the east side of the property. The second condition requested by Council is the inclusion of an Exhibit F, which is the form to be used as a disclosure requirement notifying the home buyer that the property to the east of Johnstown Farms has a Weld County USR Permit for a dirt bike/motocross track on it.

***** The agreement for water and sewer service is attached and has not been modified from its original presentation to Council. This document outlines the obligations of the developer to provide sufficient water dedication that meets the demand requirements for the property to be developed and served. It also ensure the use of sewer upon the property as development occurs. Upon execution of the agreement, the developer shall pay the required water court transfer fees.

LEGAL ADVICE: The entire Consent Agenda may be approved by a motion of the Town Council approving the Consent Agenda, which automatically approves each and every item listed on the Consent Agenda. If a Council member wishes to have a specific discussion on an individual item included with the Consent Agenda, they may move to remove the item from the Consent Agenda for discussion.

FINANCIAL ADVICE: N/A

RECOMMENDED ACTION: Approve Consent Agenda

SUGGESTED MOTION:

For Approval: I move to approve the Consent Agenda.

For Denial:

Council Minutes

The Town Council of the Town of Johnstown met on Monday, November 18, 2019 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor Lebsack led the Pledge of Allegiance.

Roll Call:

Those present were: Councilmembers Berg, Lemasters, Mellon, Tallent and Young

Those absent were: Councilmember Molinar Jr.

Also present: Avi Rocklin, Town Attorney, Matt LeCerf, Town Manager, Marco Carani, Public Works Director, Kim Meyers, Planning and Development Director, Mitzi McCoy, Finance Director and Brian Phillips, Police Chief.

Agenda Approval

Councilmember Mellon made a motion seconded by Councilmember Tallent to modify the Agenda moving Item #5 prior to Item #4. Motion carried with a unanimous vote.

Public Comments

Town Manager, Matt LeCerf read a statement in reference to the water distribution system issues that transpired over the weekend throughout the town.

Proclamations and Presentations

Mayor Lebsack read a proclamation honoring National Adoption Day.

Weld County Commissioner Scott James presented to Council the 2020 Weld County Proposed Budget.

Consent Agenda

Councilmember Lemasters made a motion seconded by Councilmember Berg to approve the Consent Agenda with the following items included for approval:

- November 18, 2019 Council Meeting Minutes
- October Financial Statements
- Amendment to Subdivision Development and Improvement Agreement – Johnstown Village LLC
- Order Granting Beer and Wine Liquor License to Best Pizza, LLC d/b/a MOD Pizza
- Order Granting Beer and Wine Liquor License to LUX Nailbar Inc.

Motion carried with a unanimous vote.

New Business

A. Consider Resolution 2019-23, A Resolution Supporting the Application for an Energy Impact Grant from the Department of Local Affairs – The Town plans to submit to the Department of Local Affairs for a grant to assist in the cost of installing sewer interceptor lines. Council is required to adopt a resolution of support for the application verifying their intent to perform and

provide matching funds. Councilmember Berg made a motion seconded by Councilmember Tallent to approve Resolution 2019-23. Motion carried with a unanimous vote.

B. Public Hearing – First Reading Ordinance Number 2019-165, An Ordinance Amending Chapter 18 of the Johnstown Municipal Code to Adopt: (1) The International Residential Code, 2018 Edition; (2) The International Building Code, 2018 Edition; (3) The International Mechanical Code, 2018 Edition; (4) The International Plumbing Code, 2018 Edition, (5) The International Energy Conservation Code, 2012 Edition; (6) The International Fuel Gas Code, 2018 Edition; (7) The International Fire Code, 2018 Edition; (8) The International Property Maintenance Code, 2018 Edition; (9) The National Electrical Code, 2017 Edition; (10) The International Existing Building Code, 2018 Edition; And (11) The International Swimming Pool and Spa Code, 2018 Edition – This ordinance amends the current Town of Johnstown Building Code Regulations. The proposed regulation would bring the Town to the current codes that are available for adoption from the ICC.

Mayor Lebsack opened the public hearing at 7:44 p.m. and having no comments closed the hearing at 7:47 p.m.

Councilmember Mellon made a motion seconded by Councilmember Young to approve Ordinance Number 2019-165 on first reading. Motion carried with a unanimous vote.

C. Public Hearing – Ordinance Number 2019-166, An Ordinance amending Section 13-27 of the Johnstown Municipal Code concerning Sewer Tap Fees for Multi-Family Residential Dwelling Units – The proposed ordinance modifies the Town's sewer tap fee. The current fee correlates to the water tap size, the new amended ordinance will correlate the fee based on the number of dwelling units. The new fee for multi-family units is \$2,640 per unit.

Mayor Lebsack opened the public hearing at 7:51 p.m. and having no public comments closed the hearing at 7:31 p.m.

Councilmember Mellon made a motion seconded by Councilmember Lemasters to approve Ordinance Number 2019-166 on first reading. Motion carried with a unanimous vote.

D. Public Hearing – Presentation of the 2020 Budget – This is the second Public Hearing.

Mayor Lebsack opened the public hearing at 8:00 p.m. and heard from staff. Having no public comments closed the hearing at 8:02 p.m. No action was taken at this time.

E. Public Hearing – Public Hearing Regarding Final Plat and Final Development Plan (PUD) for Johnstown Farms Filing No. 3 – This property is approximately 90.56 acres is located east of Parish Avenue and the Little Thompson River, and south of CR 46 ½ and is proposed as single family detached residential development. The Final Plat proposes 241 single family lots in Filing No. 3. The property was annexed and zoned PUD-R.

Mayor Lebsack opened the public hearing at 8:03 p.m. The applicant's representative Mike Pietschmann, Principal of Redland, reviewed with Council the overall development plan for the property. Council also heard from the owner of the neighboring property who also operates a motor cross track, concerns of homes being built directly adjacent to the track and the future of her business. Other individuals in the audience who also enjoy the use of the motorcycle track expressed the same issues. The public hearing closed at 9:14 p.m.

Councilmember Mellon made a motion seconded by Councilmember Lemasters to approve the Johnstown Farms Filing No. 3 Final Plat and Final Development Plan with the following conditions: 1) Any unresolved comments from Town Staff, the Town Engineer and Fire District be addressed prior to construction of any improvements, 2) A Water and Sewer Service Agreement, and a Development Agreement acceptable to the Town and signed by the developer be approved by Town Council prior to recordation of the Final Plat, 3) The developer and the adjacent property owner to the east negotiate to find a resolution regarding additional sound mitigation efforts on the east side of the property, 4) The developer provide a disclosure requirement notifying future home buyers the property to the east is a motorcross track when they purchase a home. Motion carried with a unanimous vote.

F. Consideration for the Subdivision Development and Improvement (DA) and the Water and Sewer Service Agreement for Johnstown Farms III – The Development Agreement and the Water and Sewer Service Agreement was provided to Council as information only.

G. Water Transfer Agreement – Maplewood Acres – Maplewood Acres sent the Town a request to exchange 100 CBT shares currently in the town's portfolio, to be dedicated to a water district outside the boundaries of the Town. In exchange, Maplewood will purchase 5 shares of Home Supply water from Platte Land and Water, who own the shares of water. Councilmember Lemasters made a motion seconded by Councilmember Tallent to approve the transfer of the water for both the CBT and the Home Supply Water and direct the Town Manager to provide written approval of the transfer of the water appurtenant to the property associated with the GBH Annexation to Platte Land & Water, LLC pursuant to Paragraph 9 of the Annexation Agreement. Motion carried with a unanimous vote.

H. Central Wastewater Treatment Plant Aeration Project Electrical Bid – Staff sent a request for bids to 5 electrical contractors. Bids were received from Weifield Group Contracting, Inc. and Sturgeon Electric. The job involves installing all new electrical lines for four new aerators, connect the system to the transformers, install power distribution panels and disconnect cabinets. Staff is requesting Council approval to award the bid to Weifield Group Contracting, Inc. Councilmember Berg made a motion seconded by Councilmember Mellon to award the bid to Weifield Group Contracting, Inc. for the Central Wastewater Treatment Plant Aeration project in the amount of \$152,672.00. Motion carried with a unanimous vote.

I. Consider Resolution 2019-24, A Resolution Certifying Various Liens to the Weld and Larimer County Treasurer's Office – The Town's Municipal Code allows the Town to collect utility charges and to collect past due, unpaid balances by placing a lien with the county treasurer to be collected with the real estate taxes. Weld County policy requires that all municipalities provide a resolution in order to certify liens each year. Councilmember Young made a motion seconded by Councilmember Berg to approve Resolution 2019-24 to certify the tax liens to the county treasurers. Motion carried with a unanimous vote.

There being no further business to come before Council the meeting adjourned at 10:18 p.m.

Mayor

Town Clerk

**Payment of
Bills**

Town of Johnstown - List of Bills
November 1, 2019 - November 24, 2019

<u>Vendor</u>	<u>Description</u>	<u>Dept.</u>	<u>Amount</u>
4Rivers Equipment	Service street equipment	PW	242.74
A & E Tire Inc	Tires	PD	2,484.16
Ace Hardware	Supplies	PW	861.50
Aclara Technologies LLC	Utility software	ADM	6,200.00
Adorama	Large format printer	ADM	5,387.85
All Copy Products	Reconnect copier	PD	150.00
Arapahoe Rental	Welder/generator	PW	60.42
Arrowhead Scientific Inc.	Evidence supplies	PD	49.85
Asphalt Specialties Co., Inc.	Asphalt paving	PW	38,927.71
Barnett, Ronald	Work boots	PW	50.00
BHA Design Incorporated	Professional services	ADM	1,375.00
Brandon Copeland	Professional services	ADM	282.84
Brandon Dudley	Police uniform	PD	450.00
Browns Hill Engineering & Cont, LLC	Professional services	PW	3,078.20
Card Services	Travel and training	ALL	6,534.35
Carson Excavation	Hydrant Meter Deposit Refund	ADM	1,500.00
Caselle, Inc	Software maintenance/support	ADM	1,502.00
Central Weld County Water District	Water	PW	1,206.98
CenturyLink	Telephone	ALL	351.19
Cintas	Mat service	ALL	822.71
Colo. Dept. Of Public Health	Annual emission fee	PW	1.03
Colorado Analytical Labs	Lab testing	PW	515.00
Consolidated Home Supply Ditch	Trace fees	ADM	150.00
Coren Printing, Inc	Summons & Complaint forms	ADM	1,065.00
Coulson Excavating Co Inc	Hot Mix	PW	767.20
DES Pipeline Maintenance, LLC	2019 Scheduled Maintenance	PW	45,623.20
DO2E Waste Water Treatment LLC	Aerator - sewer	PW	102,841.00
DPC Industries Inc	Chemicals	PW	26,081.26
DSI Custom Fabrication, LLC	Screen & top plate	PW	3,800.00
DXP Enterprises Inc	Turbine pumps - Lonetree Res	PW	168,913.44
Extraction Oil & Gas	Refund of deposit - Marketplace Dr.	ADM	50,000.00
Ferguson Waterworks	Supplies	PW	148.99
First Class Security Systems	Fire system monitoring	ALL	78.90
First National Bank	Monthly support	ADM	90.71
Fort Collins Dodge Chrysler Jeep	Vehicle inspection	PD	661.60
Frontier Fertilizer & Chemical	Ice melt	PW	84.96
Galloway & Company, Inc.	Professional services	PW	247.50
Glenn A. Jones Library	Library support	ADM	39,375.00
Grainger, Inc.	Supplies	PW	954.46
Greystone Technology Group	Computer support	ALL	1,265.00
Hays Market	Supplies	ALL	114.80
Hill & Robbins, PC	Billback - Legal services	ADM	1,196.59
Home Depot Pro	Office supplies	ALL	282.21
IMEG Corp	Engineering services	ADM	47,534.20
IMEG Corp	Billback - Engineering services	ADM	17,862.72
Inland Potable Services, Inc.	Service water tanks	PW	83,480.04

Town of Johnstown - List of Bills
November 1, 2019 - November 24, 2019

InVision GIS	GIS services	ADM	2,392.50
J&S Contractors Supply Co.	Flags	PW	38.52
J&T Consulting, Inc.	Design services	PW	30,338.00
Johnstown Breeze	Publication	ADM	601.56
Johnstown Clothing & Embroidery	Uniform	PW	196.88
JTF LLLP	Tax reimbursement	ADM	36,654.97
Kenyon P. Jordan, Ph.D.	Job suitability assessment	PD	235.00
Larimer County Sales Tax Admin.	Use Tax - reimbursement	ADM	9,441.22
Law Office of Avi Rocklin LLC	Legal services	ADM	9,900.00
Law Office of Avi Rocklin LLC	Bill Back - Legal Services	ADM	9,282.50
Lazar, Michael	Municipal Court Judge	ADM	1,437.50
Legacy Mechanical, Inc.	Inspection	PW	115.00
Little Thompson Water District	Water	PW	384.88
Lowe's	Heater	PW	122.13
Mac Equipment	Supplies for cemetery mowers	PW	1,778.85
Marco Carani	CDL Physical	PW	85.00
Mares Auto Inc.	Tire change police vehicle	PD	314.00
Mariposa	Plant maintenance	ADM	85.00
Milliken Johnstown Electric	Water plant repair	PW	1,720.49
Motorola Solutions, Inc.	Radio for K9 unit vehicle	PD	3,912.07
Napa Auto Parts, Inc	Supplies for Snow Plow	PW	1,149.93
National Coatings, Inc.	Water tank coating	PW	42,803.00
Newco Inc	LED lights	PW	2,338.00
Newman	Signs	PW	112.45
O.J. Watson Company Inc	Snow plow parts	PW	122.94
Office Depot Business Credit	Office supplies	ALL	535.91
Office Scapes	Supplies	ADM	396.15
Perkins+Will, Inc.	Professional services -rec ctr	ADM	9,429.48
Pitney Bowes Global	Postage meter	ADM	118.98
Poudre Valley REA	Mount transformer at pump station	PW	7,305.00
ProCode Inc.	Inspection services	ADM	10,500.00
Ray Allen Manufacturing	K9 Harness	PD	142.97
Reif & Hunsaker PC	Billback - Professional Services	ADM	122.50
Rhinehart Oil Co., Inc.	Fuel	PW	4,617.38
Southwest Direct, Inc.	Utility bill printing	ADM	359.69
TDS	Internet & Telephone	ALL	3,209.76
The Home Depot/GECF	Supplies	PW	74.97
The Tree Guys LLC	Limb removal	PW	450.00
Town of Johnstown	Petty cash replenish	ALL	247.65
Tri-Tech Forensics, Inc.	DUI blood test kits	PD	55.57
UC Health	Felony blood draw & Sane exam	PD	709.38
Utility Notification Center	Tranmissions	PW	702.90
Various Residents	Community center refunds	ADM	390.00
Various Residents	Utility refunds	ADM	989.98
VCA Fort Collins Animal Hospital	K9 Vet Exams	PD	371.88
Veris Environmental, LLC	Chemicals	PW	1,817.62
Verizon Wireless	Cell Phones	ALL	2,416.93

Town of Johnstown - List of Bills
November 1, 2019 - November 24, 2019

Waste Management	Trash	PW	59,635.82
Weld County Dept of Public	Lab services	PW	5,324.50
Weld County Detention Center	Jail services	PD	58.56
Weld County Public Safety IT	Radio activation	ADM	52.00
Windstream	Phone Services	ALL	1,921.46
WR Investment, LLC	Reimbursement agreement	ADM	9,200.00
Xcel Energy	Utilities	ALL	48,955.36
Yost Cleaning	Monthly cleaning	ALL	<u>2,169.00</u>
	Total:		992,496.10

Ordinance 2019-165

**TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2019-165**

AN ORDINANCE AMENDING CHAPTER 18 OF THE JOHNSTOWN MUNICIPAL CODE TO ADOPT: (1) THE INTERNATIONAL RESIDENTIAL CODE, 2018 EDITION; (2) THE INTERNATIONAL BUILDING CODE, 2018 EDITION; (3) THE INTERNATIONAL MECHANICAL CODE, 2018 EDITION; (4) THE INTERNATIONAL PLUMBING CODE, 2018 EDITION; (5) THE INTERNATIONAL ENERGY CONSERVATION CODE, 2012 EDITION; (6) THE INTERNATIONAL FUEL GAS CODE, 2018 EDITION; (7) THE INTERNATIONAL FIRE CODE, 2018 EDITION; (8) THE INTERNATIONAL PROPERTY MAINTENANCE CODE, 2018 EDITION; (9) THE NATIONAL ELECTRICAL CODE, 2017 EDITION; (10) THE INTERNATIONAL EXISTING BUILDING CODE, 2018 EDITION; AND (11) THE INTERNATIONAL SWIMMING POOL AND SPA CODE, 2018 EDITION.

WHEREAS, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, pursuant to Title 31, Article 16, Part 2, C.R.S., the Town Council adopted building codes in Chapter 18 of the Johnstown Municipal Code; and

WHEREAS, the Town Council desires to adopt the following new or amended versions of building codes: (1) the International Residential Code, 2018 Edition; (2) the International Building Code, 2018 Edition; (3) the International Mechanical Code, 2018 Edition; (4) the International Plumbing Code, 2018 Edition; (5) the International Energy Conservation Code, 2012 Edition; (6) the International Fuel Gas Code, 2018 Edition; (7) the International Fire Code, 2018 Edition; (8) the International Property Maintenance Code, 2018 Edition; (9) the National Electrical Code, 2017 Edition; (10) the International Existing Building Code, 2018 Edition; and (11) the International Swimming Pool and Spa Code, 2018 Edition; and

WHEREAS, the Town Council finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, is promulgated for the preservation of public health, welfare, peace, safety and property and is in the best interests of the Town of Johnstown.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:

Section 1. Article I of Chapter 18. Sections 18-1 and 18-3 of Article I of Chapter 18 of the Johnstown Municipal Code are hereby amended in full to read as follows:

Sec. 18-1. International Residential Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., the International Residential Code, 2018 Edition as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 43 inclusive and Appendix Chapters F and H ("IRC") is hereby adopted by reference as the Town of Johnstown Residential Building Code to have the same force and effect as if fully set forth herein.

Sec. 18-3. Amendments.

The International Residential Code, 2018 Edition, adopted herein is hereby modified with the following additions, deletions, insertions and changes as follows:

(1) IRC Section R101.1 (Title) is amended by the addition of the term "Town of Johnstown" where indicated.

(2) IRC Section R105.1 (Required) is amended by replacing the words "building official" with "Town."

(3) IRC Section R105.2 (Work Exempt from Permit) is amended by:

Building Exception #1 is deleted in its entirety and replaced with "One-Story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet and the roof height does not exceed 10 feet above grade measured from a point directly outside the exterior walls of the structure."

Building Exception #10 is deleted in its entirety and replaced with: "Shingle repair or replacement work not exceeding one square (100 square feet in area) of covering per building."

(4) IRC Section 105.5 (Expiration) is amended by the deletion of this section in its entirety and replaced with the following:

"Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee."

(5) IRC Section R108.5 (Refunds) is amended by the deletion of this section in its entirety and replaced with the following:

"The Town may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code. The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done. The Town shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment."

(6) IRC Section R108.6 (Work commencing before permit issuance) is amended by the deletion of this section in its entirety and replaced with the following:

"Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits may be subject to an investigation fee established by the Town. The amount of the investigation fee may be in the amount up to the amount of the permit fee that would normally be assessed for the specific type of construction activity, with any such investigation fee being in addition to all other required permit fees. The investigation fee shall be collected whether or not a permit is then subsequently issued."

(7) IRC Section R109.1.5 (Other inspections) is amended by the addition of a new subsection as follows:

"R109.1.5.2 Insulation Inspection of the structure shall be made following installation of the wall, ceiling and floor insulation and exterior windows and before wall coverings are installed."

(8) IRC Section R110.4 (Temporary occupancy) is amended by the deletion of the words "building official" in the first and second sentence and replaced with "Town."

(9) IRC Section R112.1 (General) is amended by the deletion of the last three sentences and replaced with the following:

"The members of the Council of Appeals shall be comprised of the members of the Town Council."

(10) IRC Section R112.3 (Qualifications) is amended by the deletion of this section in its entirety.

(11) IRC Section R113.2 (Notice of Violation) is amended by the addition of "Notice of Violations shall be delivered in accordance with section 107 of the IPMC" after the last paragraph.

(12) IRC Section R202 (Definitions) is amended by addition of the following:

"Sleeping Room" (Bedroom) is any enclosed habitable space within a dwelling unit, which complies with the minimum room dimension requirements of IRC Sections R304 and R305 and contains a closet, an area that is useable as a closet, or an area that is readily convertible for use as a closet. Living rooms, family rooms and other similar habitable areas that are so situated and designed so as to clearly indicate these intended uses, shall not be interpreted as sleeping rooms."

(13) IRC Table R301.2 (1) is filled to provide the following:

Table R301.2 (1)
Climatic and Geographic Design Criteria

Ground Snow Load	Wind Design		Seismic Design Category	Subject to Damage From			Winter Design Temp Deg. F	Ice barrier Underlayment Required	Flood Hazard	Air Freezing Index	Mean Annual Temp
	Speed (V)	Topographic effects		Weathering	Frost Line	Termite					
30psf	115	No	B	Severe	30 in.	Slight to Moderate	1	YES	26713	1000	43F

(14) IRC Section R302.13 (Fire Protection of Floors) is amended by deleting the section in its entirety.

(15) IRC Section R303.4 (Mechanical Ventilation) is amended by replacing “5 air changes per hour” with “7 air changes per hour” and replacing the words “in accordance with section N1102.4.1.2” with “in accordance with section 402.4.1.2 of the International Energy Conservation Code 2012 Edition.”

(16) IRC Section R309.5 (Fire sprinklers) is amended by the deletion of this section in its entirety.

(17) IRC Section R310.1 (Emergency escape and rescue opening required) is amended by adding the following after the first paragraph:

“All windows located in basements, habitable attics and sleeping rooms shall meet all the requirements of section R310.1 through R310.2.5.”

The section is further amended by deletion of Exception #2 and its conditions.

(18) IRC Section R310.2.3 (Window wells) is amended by the addition of the following:

“All windows in basements shall be an escape and rescue window, if requiring a window well pursuant to the International Residential Code shall comply with the dimension requirements set forth in this section.”

(19) IRC Section R310.2.3.1 (Ladder and steps) is amended by the addition of the following exception to read as follows:

“Exception: Only one window well ladder shall be required in an unfinished basement.”

(20) IRC Section R312.1 (Guards required) is amended by the addition of a third paragraph as follows:

“All area wells, stair wells, window wells and light wells attached to any building that are located less than 36 inches (914 mm) from the nearest intended walking surface and deeper than 30 inches (762 mm) below the surrounding ground level, creating an opening greater than 24 inches (610 mm) measured perpendicular from the building, shall be protected with guardrails conforming to this section around the entire opening, or be provided with an equivalent barrier.

Exceptions:

- (a) The access side of stairways need not be protected.
- (b) Area and window wells provided for emergency escape and rescue windows may be protected with approved grates or covers that comply with Section R310.4 of this code.
- (c) Covers and grates may be used over stairways and other openings used exclusively for service access or for admitting light or ventilation.”

(21) IRC Section R313 (Automatic Fire Sprinkler Systems) is amended by the deletion of this section in its entirety.

(22) IRC Section 315.3 (Location) is amended by deleting the first sentence and replacing it with the following:

“Carbon monoxide detection shall be installed in dwelling units within 15 feet of each separate sleeping area and on each level.”

(23) IRC Section R401.2 (Requirements) is amended by the addition of the following after the first paragraph:

“Foundations shall be designed, and the construction drawings stamped by a Colorado registered design professional. The foundation design must be based on an engineer’s soils report. The drawings must be noted with the engineering firm name, specific location for design and soils report number. A site certification prepared by State of Colorado registered design professional is required for setback verification on all new Group R Division 3 occupancies.”

(24) IRC Section R405.1 (Concrete or masonry foundations) is amended with the addition of the following after the first sentence:

“All foundation drains shall be designed and inspected by a State of Colorado registered design professional.”

(25) IRC Chapter 11 (Energy Efficiency) is amended by the deletion of this chapter in its entirety and replaced with the 2012 International Energy Conservation Code.

(26) IRC Section G2415.12 (Minimum burial depth) is amended by the addition of the following:

“All plastic fuel gas piping shall be installed a minimum of 18 inches (457 mm) below grade.”

(27) IRC Section G2415.12.1 IRC Section G2415.12.1 (Individual outdoor appliances) is amended by the deletion of this section in its entirety.

(28) IRC Section G2417.4.1 IRC Section G2417.4.1 (Test pressure) is amended by replacing 3 psig with 10 psig.

(29) IRC Section P2503.5.1 IRC Section P2503.5.1 (Rough plumbing) is amended by the deletion of the first sentence and replaced with the following:

“DWV systems shall be tested on completion of the rough piping installation by water or air without evidence of leakage.”

(30) IRC Section P2603.5.1 IRC Section P2603.5.1 (Sewer depth) is amended by filling in both areas where indicated to read “12 inches (305 mm).”

(31) IRC Section P3103.1.1 IRC Section P3103.1.1 (Roof extension) is amended by replacing “6 inches” with “12 inches.”

Section 2. Article II of Chapter 18. Sections 18-11 and 18-13 of Article II of Chapter 18 of the Johnstown Municipal Code are hereby amended in full to read as follows:

Sec. 18-11. International Building Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., the International Building Code, 2018 Edition as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 33 inclusive and Appendix Chapter H and I (“IBC”), is hereby adopted by reference as the Town of Johnstown Building Code to have the same force and effect as if fully set forth herein.

Sec. 18-13. Amendments.

The International Building Code, 2018 Edition, adopted herein is hereby modified with the following additions, deletions, insertions and changes as follows:

(1) IBC Section 101.1 (Title) is amended by the addition of the term “Town of Johnstown” where indicated.

(2) IBC Section 101.4.3 (Plumbing) is amended by the deletion of the last sentence.

(3) IBC Section 101.4.5 (Fire prevention) is amended by replacing “International Fire Code” with “adopted fire code.”

(4) IBC Section 101.4.6 (Energy) is amended by replacing the words “International Energy Conservation Code” with “2012 International Energy Conservation Code.”

(5) IBC Section 105.1 (Required) is amended by replacing the words "building official" with "Town."

(6) IBC Section 105.2 (Work exempt from permit) is amended by:

Building Exception #1 is deleted in its entirety and replaced with "One-Story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet and the roof height does not exceed 10 feet above grade measured from a point directly outside the exterior walls of the structure."

Building Exception #14 is added to read "Shingle repair or replacement work not exceeding one square (100 square feet in area) of covering per building."

(7) IBC Section 105.5 (Expiration) is amended by the deletion of this section in its entirety and replaced with the following:

"Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount of the original permit fee, exclusive of any taxes or other fees already accessed, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee."

(8) IBC Section 109.4 (Work commencing before permit issuance) is amended by the deletion of this section in its entirety and replaced with the following:

"Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits may be subject to an investigation fee established by the Town. The amount of the investigation fee may be in the amount up to the amount of the permit fee that would normally be accessed for the specific type of construction activity, with any such investigation fee being in addition to all other required permit fees. The investigation fee shall be collected whether or not a permit is then subsequently issued."

(9) Section 109.6 (Refunds) is amended by the deletion of this section in its entirety and replaced with the following:

"The Town may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code. The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done. The Town shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment."

(10) IBC Section 111.3 (Temporary occupancy) is amended by deleting the words “building official” in the first and second sentence and replacing it with “Town.”

(11) IBC Section 113.1 (General) is amended by the deletion of the last two sentences and replaced with the following:

“The members of the Council of Appeals shall be comprised of the members of the Town Council.”

(12) IBC Section 113.3 (Qualifications) is amended by the deletion of this section in its entirety.

(13) IBC Section 114.2 (Notice of Violation) is amended by the addition of “Notice of Violations shall be delivered in accordance with section 107 of the IPMC” after the last paragraph.

(14) IBC Section 202 (Definitions) is amended by addition of the following:

“Sleeping Room” (Bedroom) is any enclosed habitable space within a dwelling unit, which complies with the minimum room dimension requirements of IBC Section 1208 and contains a closet, an area that is useable as a closet, or an area that is readily convertible for use as a closet. Living rooms, family rooms and other similar habitable areas that are so situated and designed so as to clearly indicate these intended uses, shall not be interpreted as sleeping rooms.”

(15) IBC Section 915.2.1 (Dwelling units) is amended by the deletion of the first sentence and replaced with the following:

“Carbon monoxide detection shall be installed in dwelling units within 15 feet of each separate sleeping area and on every level.”

(16) IBC Section 1015.2 (Where required) is amended by the addition of a second paragraph inserted before the exceptions as follows:

“All area wells, stair wells, window wells and light wells attached to any building that are located less than 36 inches (914.4 mm) from the nearest intended walking surface and deeper than 30 inches (762 mm) below the surrounding ground level, creating an opening greater than 24 inches (610 mm) measured perpendicular from the building, shall be protected with guardrails conforming to this section around the entire opening, or be provided with an equivalent barrier.”

(17) IBC Section 1020.1 (Table 1020.1 Corridor Fire-Resistance Rating) is amended to replace the corridor rating for R Occupancies with a sprinkler system from 0.5 to 1- Hour fire rating.

(18) IBC Section 1030.2. (Minimum size) is amended by the deletion of the exception.

(19) IBC Section 1301.1.1 (Criteria) is amended by replacing “International Energy Conservation Code” with the “2012 International Energy Conservation Code.”

(20) IBM Section 1612.3 (Establishment of flood hazard areas) is amended by the insertion of "Town of Johnstown" where indicated in [Name of Jurisdiction] and the date of the latest flood insurance study for the Town of Johnstown, where indicated in [Date of Issuance].

Section 3. Article III of Chapter 18. Sections 18-21 and 18-23 of Article III of Chapter 18 of the Johnstown Municipal Code are hereby amended in full to read as follows:

Sec. 18-21. International Mechanical Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., the International Mechanical Code, 2018 Edition, as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 15 inclusive ("IMC"), is hereby adopted by reference as the Town of Johnstown Mechanical Code to have the same force and effect as if fully set forth herein.

Sec. 18-23. Amendments.

The International Mechanical Code, 2018 Edition, adopted herein is hereby modified with the following additions, deletions, insertions and changes as follows:

(1) IMC Section 101.1 (Title) is amended by the addition of the term "Town of Johnstown" where indicated.

Section 4. Article IV of Chapter 18. Sections 18-31 and 18-33 of Article IV of Chapter 18 of the Johnstown Municipal Code are hereby amended in full to read as follows:

Sec. 18-31. International Plumbing Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., the International Plumbing Code, 2018 Edition, as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 13 inclusive ("IPC"), is hereby adopted by reference as the Town of Johnstown Plumbing Code to have the same force and effect as if fully set forth herein.

Sec. 18-33. Amendments.

The International Plumbing Code, 2018 Edition, adopted herein is hereby modified with the following additions, deletions, insertions and changes as follows:

(1) IPC Section 101.1 (Title) is amended by the addition of the term "Town of Johnstown" where indicated.

(2) IPC Section 305.4.1 (Sewer depth) IPC Section 305.4.1 (Sewer depth) is amended by filling in both areas where indicated to read "12 inches (305 mm)."

(3) IPC Section 312.3 (Drainage and vent air test) is amended by deletion of the first sentence.

(4) IPC Section 903.1 (Roof extension) is amended by inserting the number "12" (152.4 mm) where indicated in the second sentence.

Section 5. Article V of Chapter 18. Sections 18-41 and 18-43 of Article V of Chapter 18 of the Johnstown Municipal Code are hereby amended in full to read as follows:

Sec 18-41. International Energy Conservation Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., the International Energy Conservation Code, 2012 Edition, as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 5 inclusive ("IECC"), is hereby adopted by reference as the Town of Johnstown Energy Conservation Code to have the same force and effect as if fully set forth herein.

Sec 18-43. Amendments.

The International Energy Conservation Code, 2012 Edition, adopted herein is hereby modified with the following additions, deletions, insertions and changes as follows:

- (1) IECC Section C101.1 (Title) is amended by the addition of the term "Town of Johnstown" where indicated.
- (2) IECC Section 101.5.1 (Low energy buildings) is amended by adding Exception #3 to read as follows:

"Commercial structures that lack one or more of the basic amenities or utilities required for year-round occupancy or use such as a permanent heating system, insulation, and/or year-round usable plumbing."
- (3) IECC Section 109.1 (General) is amended by the deletion of the last three sentences and replaced with the following:

"The members of the Council of Appeals shall be comprised of the members of the Town Council."
- (4) IECC Section 109.3 (Qualifications) is amended by the deletion of this section in its entirety.
- (5) IECC Section R402.4.1.2 (Testing) is amended by the deletion of this section in its entirety.

Section 6. Article VI of Chapter 18. Sections 18-51 and 18-53 of Article VI of Chapter 18 of the Johnstown Municipal Code are hereby amended in full to read as follows:

Sec. 18-51. International Fuel Gas Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., the International Fuel Gas Code, 2018 Edition, as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 8 inclusive ("IFGC"), is hereby adopted by reference as the Town of Johnstown Fuel Gas Code to have the same force and effect as if fully set forth herein.

Sec. 18-53. Amendments.

The International Fuel Gas Code, 2018 Edition, adopted herein is hereby modified with the following additions, deletions, insertions and changes as follows:

- (1) IFGC Section 101.1 (Title) is amended by the addition of the term "Town of Johnstown" where indicated.
- (2) IFGC Section 404.12 (Minimal burial depth) is amended by the addition of the following: "All plastic fuel gas piping shall be installed a minimum of 18 inches (457 mm) below grade."
- (3) IFGC Section 406.4.1 (Test pressure) is amended by changing the requirement of "3 psig" with "10 psig."

Section 7. Article VII of Chapter 18. Sections 18-61 and 18-63 of Article VII of Chapter 18 of the Johnstown Municipal Code are hereby amended in full to read as follows:

Sec. 18-61. International Fire Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., the International Fire Code, 2018 Edition, as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 80 inclusive and the Appendices ("IFC"), is hereby adopted by reference as the Town of Johnstown Fire Code to have the same force and effect as if fully set forth herein.

Sec. 18-63 Amendments.

The International Fire Code, 2018 Edition, adopted herein is hereby modified and amended with the following additions, deletions, insertions and changes as follows:

- (1) IFC Section 101.1 Title. These regulations shall be known as the Fire Code of the Town of Johnstown, hereinafter referred to as "this code."
- (2) IFC Section 105.6.16 Flammable and combustible liquids.
 2. To store, handle or use Class I liquids in excess of 10 gallons in a building or in excess of 50 gallons outside of a building, except that a permit is not required for the following:
 3. To store, handle or use Class II or Class IIIA liquids in excess of 50 gallons in a building or in excess of 249 gallons outside a building, except for fuel oil used in connection with oil-burning equipment.
- (3) IFC Section 105.6.30 Mobile food preparation vehicles. A permit is required for mobile food preparation vehicles equipped with appliances that produce smoke or grease-laden vapors. Businesses shall be required to comply with Annex B of NFPA 96 (2017): Standard of Ventilation Control and Fire Protection of Commercial Cooking Operations, as well as specific policies approved by the fire code official.
- (4) IFC Section 105.6.36 Outdoor assembly event. An operational permit is required to conduct an outdoor assembly event where planned attendance exceeds 1000 persons, or where the event includes *high-risk activities* as defined in Chapter 2 of this code.

(5) IFC 105.6.43 Temporary membrane structures and tents. An operational permit is required to operate an air-supported temporary membrane structure or a tent having an area in excess of 700 square feet.

(6) IFC 105.6.51 Marijuana and/or hemp establishments or businesses. Businesses or establishments that sell, grow, or process marijuana or hemp, or businesses or establishments that perform extractions of marijuana or hemp, shall be required to comply with Chapter 38 of NFPA 1: Fire Code (2018 edition), as well as specific policies approved by the fire code official and the local government with jurisdiction, to include obtaining the required permit(s) for the operations of said business or establishment.

(7) IFC 106.2 Schedule of permit fees. Fees for any permits, inspections, and/or services authorized by this code shall be assessed in accordance with the fee schedule established by the Front Range Fire Rescue Fire Protection District Board or the Loveland Rural Fire Protection District Board.

(8) IFC 109.1 Board of appeals established. In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the Town of Johnstown governing body, shall hold office at its pleasure, and shall be comprised of the members of the Board of Adjustments. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the fire code official.

(9) IFC Section 109.3 is hereby deleted in its entirety.

(10) IFC 110.4 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a misdemeanor, and upon conviction shall be subject to the penalties, costs and orders as provided by \$100. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

(11) IFC 112.4 Failure to comply. Any person who shall continue to work after having been issued a stop work order subject to the adopting of the 2018 IFC, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of \$500.

(12) IFC Section 114 Reporting of Emergencies and False Alarms.

(1) 114.1 General. Reporting of fires and hazardous materials releases shall be in accordance with Section 114.

(2) 114.2 Reporting emergencies. In the event a fire occurs or the discovery of a fire, smoke or unauthorized release of flammable, combustible or hazardous materials on any property occurs, the owner, owner's authorized representative or occupant shall without delay report such condition to the fire department.

(3) 114.3 False alarms. False alarms shall not be given, signaled or transmitted or caused or permitted to be given, signaled or transmitted in any manner.

(13) IFC Section 202 General Definitions is hereby amended by the following additions:

- (1) BOARD. Where the term "Board" is used, it shall be held to mean the Board of Directors of the fire protection district with jurisdiction.
- (2) BOARD OF APPEALS. Wherever the term "Board of Appeals" is used, it shall refer to the Town of Johnstown Board of Adjustments, as established and amended in the Town of Johnstown Municipal Code.
- (3) DISTRICT. Wherever the word "District" is used, it shall be held to mean the fire protection district with jurisdiction.
- (4) HIGH-RISK ACTIVITIES. Special events shall be deemed to be "high-risk activities" if they include the following proposed activities: display of fireworks, high-speed operation of motor vehicles, mobile food vendors, parades, races, temporary road closures, inflatable attractions, or public alcohol sales and/or consumption.
- (5) JURISDICTION. Wherever the word "Jurisdiction" is used it shall be held to mean to the inclusive boundaries of the fire protection district.
- (6) RURAL FIRE FLOW AREA. The geographic area as determined by the fire code official that traditionally has had limited fire flow.
- (7) URBAN FIRE FLOW AREA. The geographic area as determined by the fire code official that traditionally has had adequate fire flow.

(14) IFC 307.1.1 Prohibited open burning. Open burning shall be prohibited when atmospheric conditions or local circumstances make such fire hazardous. Open burning shall be specifically prohibited during active Red Flag Warnings.

Exceptions:

1. Prescribed burning for the purpose of reducing the impact of wildland fire when authorized by the fire code official.
2. Agricultural burning that is approved by *the fire code official* and is conducted in accordance with Colorado Air Quality Control Commission Regulation Number 9 (5 CCR 1001-11).

(15) IFC 307.2 Permit required. A permit shall be obtained from the County health department of jurisdiction in accordance with Section 105.6.32 prior to kindling a fire for recognized silvicultural or range or wildlife management practices, or prevention or control of disease or pests. Application for such approval shall only be presented by and permits issued to the owner of the land, or the owner's designated agent, on which the fire is to be kindled.

(16) IFC 308.1.6.3 Sky lanterns. The use, lighting, tethering or release of sky lanterns is prohibited.

(17) IFC 311.5 Placards. The fire code official is authorized to require any vacant or

abandoned buildings or structures determined to be unsafe pursuant to Section 110 of this code relating to structural or interior hazards to be marked as required by Sections 311.5.1 through Section 311.5.5.

(18) IFC 503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Section 503.1 through 503.6 and Appendix D "Fire Apparatus Access Roads."

(19) *IFC 503.1.1 Exception 1.1* If the building is equipped throughout with an approved automatic sprinkler system installed in accordance with 903.3.1.1, 903.3.1.2 or 903.3.1.3, the dimension is allowed to increase to 300 feet.

(20) IFC 503.1.2 Additional access. A minimum of two approved fire apparatus access roads shall be provided to each new residential development or new commercial or multi-family building within the jurisdiction. If multiple fire apparatus access roadways cannot be provided, all occupiable structures that are located more than 660 feet from the last roadway providing access from two directions, as measured from the centerline of this last roadway, shall be protected with an approved automatic fire sprinkler system.

Exception: Where all occupiable structures beyond 660 feet (201 m) of the centerline of the last roadway providing access to the dead-end road are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3.3, access from two directions shall not be required.

(21) IFC 503.1.2.1 Access to buildings. A minimum of two approved fire apparatus access drives shall be provided to each building or portion of building hereafter constructed or moved into the jurisdiction.

Exception: One- and two-family dwellings.

(22) IFC 503.1.3 Limited access. The fire code official is authorized to modify the fire apparatus access requirements due to existing waterways, topography, hazards or other factors.

(23) IFC 503.2 Specifications. Fire apparatus access roads shall be installed and arranged in accordance with Section 503 and Appendix D "Fire Apparatus Access Roads."

(24) IFC 503.2.5 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved area for turning around fire apparatus.

(25) IFC 503.2.7. Grade. Fire apparatus access roads shall not exceed 10 percent in grade.

Exception: Grades steeper than 10 percent as approved by the fire code official.

(26) IFC 503.2.8 Angles of approach and departure. Grade changes upon a fire apparatus access road or when entering or exiting from or to a fire apparatus access road, shall not exceed a 10 percent angle of approach or angle of departure.

(27) IFC 505.1 Address identification. New and existing buildings or facilities shall be provided with *approved* address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. Address identification characters shall contrast with their background. Address numerals shall be Arabic numbers and street names, if required

to be installed with the numerals, shall be alphabet letters. Numbers shall not be spelled out with alphabet letters. Address identification shall be maintained.

- 505.1.1.1 Addresses shall be assigned by the governmental entity having jurisdiction and shall comply with the Town of Johnstown Addressing System as well as the addressing standards of the county in which the property is located. At no time shall any new street be assigned the same name as, or one substantially similar to, any existing street name in the fire district providing primary emergency response.
- 505.1.1.2 The approved address numerals shall be visible from the street fronting the property, and posted on a contrasting background. Bronze or brass numerals shall not be posted on a brick background.
- 505.1.1.3 The address numerals for any commercial or industrial buildings shall be placed at a height to be clearly visible from the street. Where required by the fire code official, address identification shall be provided in additional, approved locations to facilitate emergency response.
- 505.1.1.4 Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure.
- 505.1.1.5 Commercial or multiple-family buildings shall have numerals with a minimum height of six inches and stroke width of one-half inch. Buildings three or more stories in height or with a total floor area of 15,000 to 50,000 square feet, shall have numerals with a minimum eight-inch height and stroke width of one inch. Buildings with a total floor area of 50,000 square feet or greater shall have numerals with a minimum height of 12 inches and stroke width of 1.5 inches.
- 505.1.1.6 Residential buildings that contain no more than two dwelling units shall have a minimum four-inch high numerals, with a minimum stroke width of one-half inch.
- 505.1.1.7 Individual suite or unit addresses shall be displayed with minimum four-inch high numerals, with a minimum stroke width of one-half inch.
- 505.1.1.8 Monument signs shall not be used in lieu of address numerals on the building.
- 505.1.1.9 Buildings with multiple suites, apartments or units shall have the individual suites, apartments or units provided with individual identification numbers in an approved, sequential order. Suites, apartments or units located on the first floor shall be identified by numbers within the 100 or 1000 range or series; Suites, apartments or units located on the second floor shall be identified by numbers within the 200 or 2000 range or series; Suites, apartments or units located on the third floor units shall be identified by numbers within the 300 or 3000 range or series. Higher floors shall follow this same numbering scheme. Floors below grade shall be identified with numerals within the 0100 range on the first floor

below grade and 0200 on the second floor below grade; lower floors shall follow the same numbering pattern.

- 505.1.1.10 Buildings, either individually or part of a multi-building complex, that have emergency access lanes on sides other than on the addressed street side, may be required to have the address numerals and street name on each side that fronts the fire lane(s).
- 505.1.1.11 Buildings that are addressed on one street, but are accessible from an adjoining street, may be required to affix the address numerals and street name on each side that is adjacent to the other street(s).
- 505.1.1.12 Approved signage shall be provided in conspicuous locations on or within buildings to provide clear direction to locate any suite, apartment or unit within the building.
- 505.1.1.13 Multiple-building complexes shall be provided with approved signage as needed to direct first responders to individual buildings.

(28) IFC 507.3 Fire flow. Fire flow requirements for buildings or portions of buildings and facilities shall be determined in accordance with Appendix B of this code.

(29) IFC 507.5.1.1 Hydrant for fire department connections. Buildings equipped with a fire department connection shall have a fire hydrant located with 150 feet of the fire department connection, using an approved route without obstacles. The hydrant and fire department connection shall be on the same side of the fire apparatus access road or parking lot drive aisle, unless otherwise approved by the fire code official.

Exception: The distance shall be permitted to exceed 150 feet where approved by the fire code official.

(30) IFC 509.1.2 Utility disconnect. The fire code official is authorized to approve utility disconnect locations.

(31) IFC 901.1. Scope. The provisions of this chapter shall specify where fire protection and life safety systems are required and shall apply to the design, installation, inspection, operation, testing and maintenance of all fire protection systems. Where requirements of this code and the International Building Code are in conflict, the more restrictive shall apply.

(31) IFC 903.2.8.4.5. Dead-end roadways. An approved automatic fire-sprinkler system shall be installed in all Group R occupancies, including one- and two-family residences and townhomes, when the structure is located beyond 660 feet of the entrance to a dead-end roadway, as measured from the centerline of the last roadway providing access to the dead-end road.

(32) IFC Section 903.2.9 Condition #6 - A Group S-1 fire area exceeds 5,000 square feet (464.5 m²) for self-storage buildings or structures.

(33) IFC 903.4.3 Control Valves. Approved supervised indicating control valves shall be provided at the point of connection to the riser on each floor in all multi-story structures and to each individual tenant space in multi-tenant structures.

(34) IFC 907.5.2 Alarm notification appliances. Alarm notification appliances shall provide full occupant notification throughout the entire building or structure, and shall be designed and installed in accordance with NFPA 72. Alarm notification appliances shall be listed for their purpose.

(35) IFC 3103.2 Approval Required. Tents, canopies and membrane structures in excess of 700 square feet in size shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the fire code official.

(36) IFC 3106.4:1.1 Standby emergency medical services. Public assembly events with an anticipated attendance of 350 persons or more shall require the standby services of at least one (1) basic life support ambulance staffed with at least two (2) EMT-Basics. Public assembly events with an anticipated attendance of more than 1,000 persons shall require the standby services of at least one (1) advanced life support ambulance staffed with at least one (1) EMT-Paramedic and one (1) EMT-Basic. The fire code official is authorized to grant exceptions and/or alternate plans for the provision of standby emergency medical services.

(37) IFC 5001.1 Scope Exception #10: The production, processing and/or storage of distilled spirits and wines in wooden barrels and casks when the building or facility is in conformance with "Recommended Fire Protection Practices for Distilled Spirits Beverage Facilities" as published by the Distilled Spirits Council of the United States (DISCUS).

(38) IFC 5601.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited unless permitted by state or local laws.

(39) IFC 5601.1.3, Exception 4: The possession, storage, sale, handling and use of *permissible fireworks* in accordance with state statute and local municipal codes.

(40) IFC 5601.2.2 Sale and retail display. Persons shall not construct a retail display nor offer for sale explosives, explosive materials or fireworks on highways, sidewalks, public property or in any permanent building.

(41) IFC 5602 Definitions - Permissible Fireworks. As defined in Colorado Revised Statutes, 12-28-101 § CRS:

(42) IFC 5610 Permissible fireworks. Permissible fireworks shall be possessed, stored, sold, handled and used in accordance with this section and with state and local laws.

(43) IFC 5610.1 General. Permissible fireworks use shall be as detailed in this section and in accordance with state and local laws.

(44) IFC 5610.2 Use of fireworks. The use of permissible fireworks shall be in accordance with Sections 5610.2.1 through 5610.2.4.

(45) IFC 5610.2.1 It shall be unlawful for any person to possess, store, offer for sale, expose for sale, sell at retail, use, or discharge any fireworks, other than permissible fireworks.

(46) IFC 5610.2.2 It shall be unlawful for any person to knowingly furnish to any person under 16 years of age, by gift, sale, or any other means, any fireworks, including permissible fireworks.

(47) IFC 5610.2.3 It shall be unlawful for any person under 16 years of age to purchase fireworks, including permissible fireworks.

(48) IFC 5610.2.4 It shall not be unlawful for a person under 16 years of age to possess and discharge permissible fireworks if such person is under adult supervision throughout the act of possession and discharge.

(50) IFC 5701.2 Non-applicability Exception #10: The production, processing and/or storage of distilled spirits and wines in wooden barrels and casks when the building or facility is conformance with "Recommended Fire Protection Practices for Distilled Spirits Beverage Facilities" as published by the Distilled Spirits Council of the United States (DISCUS).

(51) IFC 5704.2.9.6.1 Locations where above-ground tanks are prohibited. Storage of Class I and Class II liquids in above-ground tanks outside of buildings is prohibited within the limits established by law as addressed by ordinance and/or zoning regulation adopted by the local government with jurisdiction.

(52) IFC 5704.2.14.1 Removal Exception #7: Removal of above-ground and underground tanks shall be in accordance with federal, state and local regulations.

(53) IFC 5704.3.3 Indoor storage. Exception #2:2. The production, processing and/or storage of distilled spirits and wines in wooden barrels and casks when the building or facility is conformance with "Recommended Fire Protection Practices for Distilled Spirits Beverage Facilities" as published by the Distilled Spirits Council of the United States (DISCUS).

(54) IFC 5706.2.4. Permanent and temporary tanks. The capacity of permanent above-ground tanks containing Class I or Class II liquids shall not exceed 500 gallons, and the capacity of temporary above-ground tanks containing Class I or Class II liquids shall not exceed 2,000 gallons, unless larger amounts are approved in writing by the fire code official. Tanks shall be of single-compartment design. (Exception is deleted)

(55) IFC 5706.2.4.4 Locations where above-ground tanks are prohibited. Storage of Class I and Class II liquids in above-ground or underground tanks outside of buildings is prohibited within the limits established by ordinance and/or zoning regulation adopted by the local government with jurisdiction.

(56) IFC 5706.3.9 Portable fire extinguishers. Portable fire extinguishers shall be located throughout the site in locations approved by the fire code official.

(57) IFC 5706.3.10 Identification of hazards. All hazardous materials tanks or containers shall be appropriately labeled in accordance with NFPA 704, or other standard as approved by the fire code official. All hazard markings shall be maintained by the operator.

(58) IFC 5706.3.11 Access roads. All access roads to well drilling and operating facilities shall comply with Section 505.1 and Appendix D of this code.

(59) IFC 5706.3.12 Facility security. All fences and gates installed to provide facility security shall comply with Section 503.6 of this code. The fire code official may require a Knox Box, Knox switch, or Knox padlock to be installed by the operator to provide fire department access to the site.

(60) IFC 5706.3.13 Safety regulations. All oil and gas locations shall comply with all Colorado Oil and Gas Conservation Commission (COGCC) rules. COGCC Rule 600 shall be specifically addressed for all site safety requirements.

(61) IFC 5806.2 Limitations. Storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited within the limits established by ordinance and/or zoning regulation adopted by the local government with jurisdiction.

(62) IFC 6104.2 Maximum capacity within established limits. Within the limits established by law restricting the storage of liquefied petroleum gas for the protection of heavily populated or congested areas, the aggregate capacity of any one installation shall not exceed the limits established by ordinance and/or zoning regulation adopted by the local government with jurisdiction.

Exception: In particular installations, this capacity limit shall be determined by the fire code official, after consideration of special features such as topographical conditions, nature of occupancy, and proximity to buildings, capacity of proposed LP-gas containers, degree of fire protection to be provided and capabilities of the local fire department. These provisions shall not be interpreted so as to conflict with the provisions of Colorado Revised Statutes Title 8, Article 20 or Title 34 as amended. In the event of any conflict, the more restrictive provision shall prevail.

(63) IFC Chapter 80 Referenced standards:

COGCC Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, suite 801
Denver, CO 80203
Rule 600: Safety Regulations
Referenced in Section 5706.3.13

DISCUS Distilled Spirits Council of the United States
1250 Eye Street, NW suite 400
Washington, DC 20005

Recommended Fire Protection Practices for Distilled Spirits Beverage
Facilities, 3rd edition, June 2005
Referenced in Sections 5001.1, 5701.2, 5704.3.3

NFPA National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02169-7471

NFPA 1-18: Fire Code, Chapter 38: Marijuana Growing, Processing, or
Extraction Facilities

Referenced in Subsection 105.6.51

NFPA 96-17: Standard for Ventilation Control and Fire Protection in Commercial Cooking Operations, Annex B

Referenced in Subsection 105.6.30.

(64) IFC APPENDIX B: Fire-Flow Requirements for Buildings is adopted with changes

(1) Table B105.2, Footnote a. The reduced fire flow shall be not less than 1,500 gallons per minute

(65) IFC APPENDIX C: Fire Hydrant Locations and Distribution is adopted with changes

(1) C101.1 Scope. In addition to the requirements of Section 507.5.1, fire hydrants shall be provided in accordance with this appendix for the protection of buildings, or portions of buildings, hereafter constructed or moved into the jurisdiction. The fire code official is authorized to modify the location, number and distribution of fire hydrants based on site-specific constraints and hazards.

(2) Table C102.1 is hereby amended by renaming it Table C102.1 Required Number of Fire Hydrants and deleting columns Average Spacing Between Hydrants and Maximum Distance from any Point on a Street or Road Frontage to a Hydrant, and deleting all footnotes.

(3) Table C103.1 Required Spacing of Hydrants and associated footnotes:

TABLE C103.1

REQUIRED SPACING OF HYDRANTS

APPLICATION	SPACING BETWEEN HYDRANTS (feet) ^{a,b}	MAXIMUM DISTANCE FROM THE CLOSEST POINT ON A BUILDING TO A HYDRANT (feet)
Buildings other than one- and two-family dwellings, Group R-3 and R-4, and townhouses	350	400 ^c
Urban One- and Two-Family Dwellings, Group R-3 and R-4, and townhouses	600	600

Rural One - and Two-Family Dwellings, Group R-3 and R-4, and townhouses	1,000	1,000
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- a. Where streets are provided with median dividers that cannot be crossed by fire fighters pulling hose lines, or are arterial streets, hydrant spacing shall average 350 feet on each side of the street and be arranged on an alternating basis.
- b. Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, fire hydrants shall be provided at spacing not to exceed 1,000 feet to provide for transportation hazards.
- c. For buildings equipped with a fire department connection, see Section 507.5.1.1.

(4) C103.1 Hydrant spacing. Fire apparatus access roads and public streets providing required access to buildings in accordance with Section 503 shall be provided with one or more fire hydrants, as determined by Section C102.1. Where more than one fire hydrant is required, the distance between required fire hydrants shall be in accordance with Sections C103.2 and C103.3.

(5) C103.2 Spacing between hydrants. The spacing between fire hydrants shall be in accordance with Table C103.1. (Exception deleted).

(6) C103.3 Spacing from hydrants to a building. The maximum spacing from fire hydrants to a structure shall be in accordance with Table C103.1

(7) C105 Referenced Standard is deleted in its entirety.

(66) IFC APPENDIX D: Fire Apparatus Access Roads is adopted with changes:

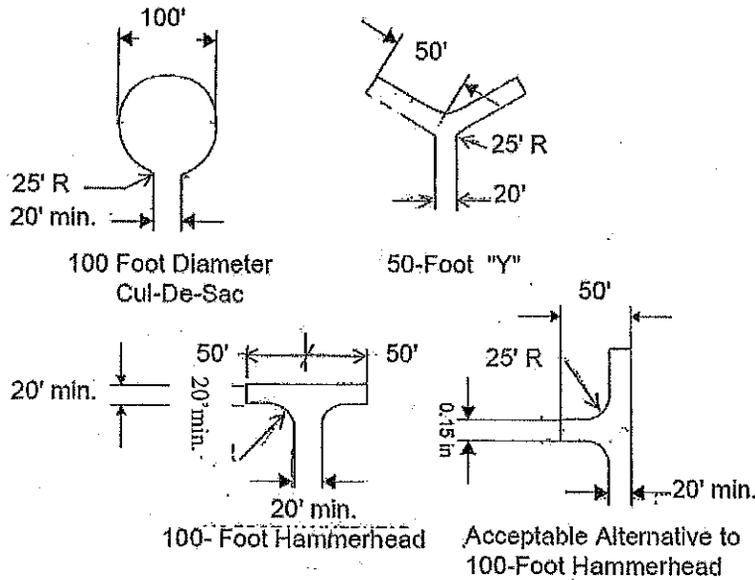
(1) D102.1 Access and loading. Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an approved fire apparatus access road capable of supporting the imposed load of fire apparatus weighing at least 80,000 pounds (36,287 kg).

(2) D102.2 Roadway surface. All access roadways must be all-weather driving surfaces capable of supporting fire apparatus. Surfaces shall be asphalt or concrete and maintained in a usable condition at all times. Compacted road base or other all-weather surfaces engineered and capable of supporting the imposed loads may be approved for outdoor vehicle storage, ground-mounted solar installations, cell towers and similar isolated facilities and structures when approved by the fire code official.

(3) D102.2.1 Access during construction. Compacted road base, chip or other all-weather surfaces shall be used only for temporary emergency access. All required access roads must be installed and serviceable before aboveground construction begins. Temporary

access shall be available as long as the site is under construction. Thereafter, permanent fire lanes conforming with D102.1 and D102.2 shall be accessible and unobstructed at all times.

(4) Table D103.1 is hereby amended to read as follows:



(5) Table D103.4:

TABLE 103.4
REQUIREMENTS FOR DEAD-END FIRE APPARATUS ACCESS ROADS

LENGTH (feet)	WIDTH (feet)	TURNAROUNDS REQUIRED
0-150	20	None required
151 and longer	20	100-foot hammerhead, 100-foot cul-de-sac in accordance with Figure D103.1

(6) Section D103.3 is hereby amended to read as follows:

(7) D103.3 Turning radius. The minimum turning radii shall be 25 feet inside radius and 50 feet outside radius.

(8) D103.5 Exception: Private driveways serving one (1) single-family residence.

(9) D103.6 Signs. Where required by the fire code official, fire apparatus access roads

shall be marked with permanent NO PARKING – FIRE LANE signs complying with Chapter 2B of the Manual on Uniform Traffic Control Devices. Signs shall be posted on one or both sides of the fire apparatus road as required by Section D103.6.1 or D103.6.2.

(10) Figure D103.6 Fire Lane Signs is deleted.

(11) D104.1 Multiple access. A minimum of two approved fire-apparatus access roads shall be provided to each developed lot within the jurisdiction. If multiple fire apparatus access roadways cannot be provided and the single, dead-end roadway is in excess of 660 feet in length, as measured from the centerline of the last roadway providing access to the dead-end road, all occupiable structures located beyond 660 feet shall be protected with an approved automatic fire sprinkler system.

Exception: Where all occupiable structures beyond 660 feet (201 m) of the centerline of the last roadway providing access to the dead-end road are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3.3, access from two directions shall not be required.

(12) D104.2 Access to buildings. A minimum of two approved fire-apparatus access drives shall be provided to each building or portion of building hereafter constructed or moved into the jurisdiction.

Exception: One- and two-family dwellings.

(13) D104.3 Remoteness. Where two fire apparatus access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the lot or area to be served, measured in a straight line between accesses. If all structures are protected by an approved automatic fire-sprinkler system, the access roadways may be placed a distance apart equal to not less than one-third the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line.

(14) D106 is hereby deleted.

(15) D107 is hereby deleted in its entirety.

(16) D108 is hereby deleted in its entirety.

(67) IFC APPENDIX E: Hazard Categories is adopted.

(68) IFC APPENDIX F: Hazard Ranking is adopted.

(69) IFC APPENDIX G: Cryogenic Fluids – Weight and Volume Equivalents is adopted in its entirety.

(70) IFC APPENDIX H: Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions is adopted.

(71) IFC APPENDIX I: Fire Protection Systems – Noncompliant Conditions is adopted in its entirety.

Section 8. Article VIII of Chapter 18. Article VIII of Chapter 18 of the Johnstown Municipal Code shall be omitted and replaced in full with the following:

ARTICLE VIII. International Property Maintenance Code.

Sec. 18-71. International Property Maintenance Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., the International Property Maintenance Code, 2018 Edition, as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 8 inclusive (“IPMC”), is hereby adopted by reference as the Town of Johnstown Property Maintenance Code to have the same force and effect as if fully set forth.

Sec. 18-72. Application of Regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

Sec. 18-73. Amendments.

The International Property Maintenance Code, 2018 Edition, adopted herein is hereby modified with the following additions, deletions, insertions and changes as follows:

(1) IPMC Section 101.1 (Title) is amended by the addition of the term “Town of Johnstown” where indicated.

(2) IPMC Section 102.3 (Application of Other Codes) is amended by the deletion of the section and is replaced with the following:

“Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the current adopted building and zoning codes.”

(3) IPMC Section 103.5 (Fees) is amended by the deletion of the section and is replaced with the following:

“Costs incurred in the performance of work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises or owner’s authorized agent where the unsafe structure is or was located for the recovery of such costs.”

(4) IPMC Section 111.2 (Membership of Council) is amended by the deletion this section in its entirety and replaced with the following:

“The members of the Council of Appeals shall be comprised of the members of the Town Council.”

- (5) IPMC Section 111.2.1 (Alternate Members) is amended by the deletion of this section in its entirety.
- (6) IPMC Section 111.2.2 (Chairman) is amended by the deletion of this section in its entirety.
- (7) IPMC Section 111.2.3 (Disqualification of member) is amended by the deletion of this section in its entirety.
- (8) IPMC Section 111.2.4 (Secretary) is amended by the deletion of this section in its entirety.
- (9) IPMC Section 111.2.5 (Compensation of members) is amended by the deletion of this section in its entirety.
- (10) IPMC Section 111.3 (Notice of Meeting) is amended by the deletion of this section in its entirety.
- (11) IPMC Section 111.4 (Open Hearing) is amended by the deletion of this section in its entirety.
- (12) IPMC Section 302.3 (Sidewalks and Driveways) is amended by the deletion of this section in its entirety.
- (13) IPMC Section 302.4 (Weeds) is amended by the deletion of this section in its entirety.
- (14) IPMC Section 302.8 (Motor Vehicles) is amended by the deletion of this section in its entirety.
- (15) IPMC Section 304.14 (Insect Screens) is amended by the deletion of this section in its entirety.
- (16) IPMC Section 308 (Rubbish and Garbage) is amended by the deletion of this section in its entirety.
- (17) IPMC Section 309 (Pest Elimination) is amended by the deletion of this section in its entirety.
- (18) IPMC Section 604.2 (Service) is amended by replacing "NFPA 70" with "Electrical Code adopted by the State of Colorado."

Section 9. Article IX of Chapter 18. Sections 18-81 and 18-83 of Article IX of Chapter 18 of the Johnstown Municipal Code are hereby amended in full to read as follows:

Sec. 18-81. National Electrical Code.

Pursuant to Title 31, Article, 16, Part 2, C.R.S., the National Fire Protection Association standard number 70, hereafter known as the National Electrical Code, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts, 02169-7471, is hereby adopted by reference as the Town of Johnstown Electrical Code as if fully set forth herein. The effective edition of the Town of Johnstown Electrical Code shall be the National Electrical Code, 2017 Edition. The effective edition shall be replaced by subsequent edition(s) of the National Electrical Code adopted by the State of Colorado Electrical Council, Division of Professions and Occupations, Department of Regulatory Agencies, 1560 Broadway, Suite 1350, Denver, Colorado, 80202, and such subsequent editions shall be effective one year after the State of Colorado Electrical Council, Division of Professions and Occupations, Department of Regulatory Agencies adopts such edition.

Sec. 18-83. Amendments.

The National Electrical Code adopted herein is hereby amended as follows:

(1) The electrical permit fees for each permit shall be as established from time to time by resolution of the Council of Trustees and set forth in the Town fee schedule maintained by the building officials for such purposes.

Section 10. Article X of Chapter 18 (Old Version). Article X of Chapter 18 of the Johnstown Municipal Code shall be moved and re-numbered to Article XII and the Sections therein shall be re-numbered and re-titled to read "Section 18-111. Violation" and "Section 18-112. Penalty," and shall provide that Sections 18-113 - 18-120 are reserved for future use.

Section 11. Article X of Chapter 18 (New Version). A revised version of Article X of Chapter 18 of the Johnstown Municipal Code shall be added to the Johnstown Municipal Code and shall read as follows:

ARTICLE X. International Existing Building Code.

Sec. 18-91. International Existing Building Code.

Pursuant to Title 31, Article, 16, Part 2, C.R.S., the International Existing Building Code, 2018 Edition, as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 16 inclusive ("IEBC"), is hereby adopted by reference as the Town of Johnstown Existing Building Code as if fully set forth herein.

Sec. 18-92. Application of Regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

Sec. 18-93. Amendments.

The International Existing Building Code, 2018 Edition, adopted herein is hereby modified with the following additions, deletions, insertions and changes as follows:

(1) International Existing Building Code is amended by replacing all references to "International Fire Code" with "Adopted Fire Code."

(2) IEBC Section 101.1 (Title) is amended by the addition of the term "Town of Johnstown" where indicated.

(3) IEBC Section 1401.2 (Conformance) is amended by the deletion of this section in its entirety and replaced with the following:

"Structures moved into or within the jurisdiction shall comply with the provision of this code for new structures."

Section 12. Article XI of Chapter 18 (Old Version). Article XI of Chapter 18 of the Johnstown Municipal Code shall be moved and re-numbered to Article XIII and the Section therein shall be re-numbered and re-titled to read "Section 18-121. Fees and charges" and shall provide that Sections 18-122 - 18-130 are reserved for future use.

Section 13. Article XI of Chapter 18 (New Version). A revised version of Article XI of Chapter 18 of the Johnstown Municipal Code shall be added to the Johnstown Municipal Code and shall read as follows:

ARTICLE XI. International Swimming Pool and Spa Code.

Sec. 18-101. International Swimming Pool and Spa Code.

Pursuant to Title 31, Article, 16, Part 2, C.R.S., the International Swimming Pool and Spa Code, 2018 Edition, as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 11 inclusive, is hereby adopted by reference as the Town of Johnstown Swimming Pool and Spa Code as if fully set out in this ordinance.

Sec. 18-102. Application of Regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

Section 14. Severability. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

Section 15. Code revisions. Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

Section 16. Publication and Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective January 1, 2020 and upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the Ordinance and of the adopted building codes are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2019.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2019.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

Ordinance 2019-166

**TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2019-166**

**AN ORDINANCE AMENDING SECTION 13-27 OF THE JOHNSTOWN
MUNICIPAL CODE CONCERNING SEWER TAP FEES FOR MULTI-
FAMILY RESIDENTIAL DWELLING UNITS**

WHEREAS, the Town of Johnstown, Colorado ("Town") is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town's Home Rule Charter; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, the Town is experiencing significant residential growth that includes the construction of numerous multi-family residential developments; and

WHEREAS, the Town imposes sewer tap fees for residential dwelling units based on the size of the water meter, without accounting for the number of dwelling units in a residential structure; and

WHEREAS, unlike non-residential development, the impacts to the Town's wastewater system from multi-family residential use of property is not properly correlated with the size of the water meter and is not the same as the impacts associated with commercial and industrial use of property; and

WHEREAS, rather, the impacts to the Town's wastewater system from multi-family residential units is substantially identical to the impacts associated with detached single family residences; and

WHEREAS, because of the impacts, the sewer tap fee for multi-family units should not be based on the size of the water meter, but should be calculated on a per dwelling unit basis; and

WHEREAS, the conclusion is substantiated by the fact that the potable in-building water demand for multi-family units is assessed on a per unit basis, equal to eighty-eight percent (88%) of the single-family home demand for each unit, meaning that the amount of water that a multi-family residential structure uses, and thus the related wastewater, is correlated with the number of dwelling units in the structure; and

WHEREAS, the Town's neighboring jurisdictions recognize that impacts from multi-family dwelling units are associated with the residential use of the property and calculate the sewer tap fee on a per unit basis; and

WHEREAS, the City of Loveland imposes a sewer tap fee (known in that jurisdiction as the wastewater system impact fee) on a per unit basis for attached one-family dwellings and multi-family dwellings containing 2-8 dwelling units at a rate that is approximately eighty-eight percent (88%) of the single family rate and for multi-family dwellings containing 9 or more dwelling units at a rate that is approximately sixty-eight percent (68%) of the single family rate; and

WHEREAS, the City of Greeley imposes a sewer tap fee (known in that jurisdiction as the wastewater plant investment fee) on a per unit basis for individual structures containing more than one living unit at a rate that is approximately fifty percent (50%) of the single family rate; and

WHEREAS, the City of Fort Collins imposes a sewer tap fee (known in that jurisdiction as the wastewater plant investment fee) on a per unit basis for duplex and multi-family units at a rate that is approximately seventy-three percent (73%) of the single family rate; and

WHEREAS, consistent with those jurisdictions and, more importantly, to account for the impacts to the Town's wastewater system, Town Council desires to impose sewer tap fees for residential use of property based on the number of dwelling units and not on the water meter size; and

WHEREAS, Town Council recognizes that the most accurate representation of the impact to the Town's wastewater system from multi-family residential use may be based on the in-unit water demand, which is equal to eighty-eight percent (88%) of the single-family in-home water demand; and

WHEREAS, because this is a new methodology for the Town, Town Council does not, at this time, seek to impose a sewer tap fee that is equal to eighty-eight percent (88%) of the sewer tap fee for single family homes, but, rather, seeks to impose a sewer tap fee for multi-family residential dwelling units that is a lesser amount, equal to fifty percent (50%) of the detached single family dwelling unit fee; and

WHEREAS, Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property, that this Ordinance is necessary for the protection of public convenience and welfare and that this Ordinance is in the best interests of the citizens of the Town.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Section 13-27 of the Johnstown Municipal Code shall be amended to read as follows:

Sec. 13-27. Sewer tap fees.

- (a) Residential. The sewer tap fee is determined based on the number of dwelling units. Fees are summarized in the following table:

Residential Sewer Tap Fees

DWELLING UNIT	SEWER TAP FEES
Single Family Attached	\$5,280
Attached (Duplex, Triplex, Townhome) (per unit)	\$5,280
Multi-family (per unit)	\$2,640

- (b) Non-residential. The sewer tap fee is determined in accordance with the meter capacity as recommended for the water meters. Water use and wastewater flows from the larger meters can vary widely from one (1) customer to another, depending on the type of customer. Consequently, the fees for the larger meters (four [4] inches through eight [8] inches) shall be determined on a case-by-case basis to reflect the individual needs of those users. Fees are summarized in the following table:

Non-Residential Sewer Tap Fees

Meter Size	Ratio to 3/4"	SEWER TAP FEES In-Town
3/4"	1	\$5,280
1"	1.7	\$7,650
1-1/2"	3.3	\$14,850
2"	5.3	\$23,850
3"	11.7	\$52,650
4"	21	Negotiable
6"	46.7	Negotiable
8"	80	Negotiable

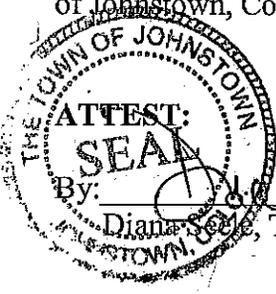
- (c) Building Permit. Unless otherwise authorized by the Town in writing, the sewer tap fee(s) is due and payable to the Town at the issuance of an approved building permit.

Section 2. Repeal. Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 3. Publication; Effective Date; Recording. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town Charter and the adoption, posting and publication shall be authenticated by the signature of the

Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this 18th day of November, 2019.



By: Diana Seele
Diana Seele, Town Clerk

TOWN OF JOHNSTOWN, COLORADO

By: Gary Lebsack
Gary Lebsack, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this _____ day of _____, 2019.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

**Resolution
No. 2019-26**

TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2019-26

APPROVING THE FINAL DEVELOPMENT PLAN AND FINAL PLAT FOR JOHNSTOWN FARMS FILING NO. 3 LOCATED IN THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, CONSISTING OF APPROXIMATELY 90.563 ACRES.

WHEREAS, TF Johnstown Farms, LP, a Delaware limited partnership, the property owner ("Owner"), submitted an application to the Town of Johnstown ("Town") for approval of a Final Development Plan and Final Plat for Johnstown Farms Filing No. 3, located in the Southwest Quarter of Section 9, Township 4 North, Range 67 West of the 6th Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, consisting of approximately 90.563 acres; and

WHEREAS, on January 30, 2019, the Planning and Zoning Commission held a public hearing and recommended approval of the Final Development Plan and Final Plat for Johnstown Farms Filing No. 3 with conditions; and

WHEREAS, on November 18, 2019, the Town Council held a public hearing concerning approval of the Final Development Plan and Final Plat for Johnstown Farms Filing No. 3, and, after considering the Planning and Zoning Commission's recommendation, reviewing the file and conducting such hearing, found that:

1. The Final Development Plan and Final Plat for Johnstown Farms Filing No. 3 satisfy the data requirements, design standards and required improvements contained in the Johnstown Municipal Code, including the regulations contained in Chapters 16 and 17; and
2. The Final Plat for Johnstown Farms Filing No. 3 conforms substantially with the approved Preliminary Plat; and

WHEREAS, based on the foregoing, Town Council desires to approve the Final Development Plan and Final Plat for Johnstown Farms Filing No. 3, with conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:

Section 1. Final Development Plan Approval: The Final Development Plan for Johnstown Farms Filing No. 3, attached hereto as Exhibit A, is hereby approved, subject to the conditions set forth in Section 3.

Section 2. Final Plat Approval: The Final Plat for Johnstown Farms Filing No. 3, located in the Southwest Quarter of Section 9, Township 4 North, Range 67 West of the 6th Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, consisting of approximately 90.563 acres, attached hereto as Exhibit B, is hereby approved, subject to the conditions set forth in Section 3.

Section 3. Conditions of Approval: The Final Development Plan and Final Plat for Johnstown Farms Filing No. 3 are approved subject to the following conditions:

1. Any unresolved comments from Town Staff, the Town Engineer and the Front Range Fire Rescue Fire Protection District shall be addressed prior to construction of any improvements; and
2. The Town and the Owner shall execute a Water and Sewer Service Agreement and a Subdivision Development and Improvement Agreement prior to recordation of the Final Plat.

Section 4. Recording: The Town Clerk is hereby directed to obtain the appropriate signatures for the Final Plat for Johnstown Farms Filing No. 3 and record the Final Plat as provided herein at the Office of the Weld County Clerk and Recorder.

PASSED, SIGNED, APPROVED, AND ADOPTED THIS ____ day of _____, 2019.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

**Subdivision Development
And
Improvement Agreement**

(Johnstown Farms Filing No. 3)

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
TOWN OF JOHNSTOWN
(Johnstown Farms Filing No. 3)**

This Subdivision Development and Improvement Agreement (“Agreement”), made and entered into by and between the TOWN OF JOHNSTOWN, COLORADO, a municipal corporation (the “Town”), TF JOHNSTOWN FARMS, L.P., a Delaware limited partnership (the “Developer”) and the JOHNSTOWN FARMS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”).

RECITALS

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

WHEREAS, Developer seeks to develop the Property and to designate such development as Johnstown Farms Filing No. 3 (“Development”); and

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

WHEREAS, the Town Council approved, or will approve, the Final Plat by passage of Resolution 2019-18, containing terms and conditions of approval of the Final Plat, which Resolution is, or will be, attached hereto as **Exhibit B-2** and incorporated herein by this reference (“Resolution”); and

WHEREAS, Developer understands and agrees that, as a further condition of approval of the Final Plat, Developer is required to construct certain subdivision improvements to the Property, that Developer is responsible for the costs and expenses of those subdivision improvements unless otherwise provided herein, and that the subdivision improvements contemplated herein are reasonable, necessary, appropriate, and directly benefit the Development; and

WHEREAS, Developer agrees to undertake and complete the Development in accordance with this Agreement, the Final Plat, the Resolution, the Town’s ordinances, resolutions and regulations and all other applicable laws and regulations; and

WHEREAS, the Town, the Developer and the District recognize and agree that the District has obligations with respect to the operation and maintenance of certain Public Improvements, as set forth in **Exhibit B-3**, and is a signatory hereto to affirm those obligations.

AGREEMENT

NOW, THEREFORE, in consideration of the premises cited above and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the Town and Developer agree as follows:

RECITALS

The Recitals are incorporated as if fully set forth herein.

DEFINITIONS

For the purposes of this Agreement, the following words and terms shall be defined as follows:

1.1 **“Approved Plans”** shall mean: (1) with respect to the Public Improvements, the approved **“Civil Engineering Construction Plans”** related to the Development and on file with Town; and (2) with respect to the Private Improvements, the approved **“the Site Development Plan”** related to the Development and on file with Town.

1.2 **“Developer”** shall mean the owner(s) of the Property described in **Exhibit A** and any heirs, successors, assigns or transferees of any of the Property described in **Exhibit A**.

1.3 **“Civil Engineering Construction Plans”** shall mean the approved engineering plans for construction, installation and improvement of the Public Improvements.

1.4 **“Development”** shall mean all the Property, property rights and Subdivision Improvements within the legal description in **Exhibit A**.

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

1.6 **“Maintenance Guarantee”** shall mean a guarantee that the Public Improvements constructed shall be free from defects and failures as more fully described in Paragraphs 5.2 and 5.4 below.

1.7 **“Private Improvements”** shall mean, without limitation, the construction, installation and improvement of privately owned and maintained common improvements including, but not limited to, detention facilities, landscaping, irrigation, fencing, entry signs, parks and open space, trails, postal service boxes, and decorative, non-standard street posts and lighting.

1.8 **“Public Improvements”** shall mean, without limitation, the construction, installation, improvement and dedication of public improvements, including, but not limited to public thoroughfares and streets, sanitary sewer facilities, water line facilities, stormwater

improvements (excluding detention facilities), drainage facilities, irrigation structures, standard street signs and posts and other public facilities and improvements to serve the Development.

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

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

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

1.12 “**Town Engineer**” shall mean the professional engineer designated by the Town Manager to perform the obligations set forth in this Agreement.

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

1.14 “**Town Official**” shall include the Town Manager, Town Attorney, Town Treasurer, Town Engineer, Town Planner and their authorized designees.

SUBDIVISION IMPROVEMENTS

2. Public Improvements

2.1 *Pre- Construction*

a. **Engineering Services:** Developer shall furnish, at its own expense, all engineering services in connection with construction, installation and improvement of the Public Improvements. Engineering services shall be performed by a professional engineer registered in the State of Colorado. Engineering services shall consist of, but not be limited to, survey, designs, plans and profiles, specifications, drawings, estimates, construction administration, and the furnishing of necessary documents in connection therewith, including but not limited to final engineering drawings, final sewer and water design plans and final drainage plans (the “Civil Engineering Construction Plans”).

b. **Civil Engineering Construction Plans:** Prior to commencing construction of the Public Improvements, Developer shall submit the Civil Engineering Construction Plans to the Town Engineer for review. Construction of the Public Improvements shall not commence until the Town provides written notice of approval of the Civil Engineering Construction Plans. Developer shall not thereafter modify the approved Civil Engineering Construction Plans without the written approval of the Town. The Town’s review and approval of the Civil Engineering Construction Plans shall not limit or affect Developer’s responsibility or liability for design, construction and installation of the Public Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to such design, construction

and installation, other than negligent designs which are required by the Town over Developer's written objection.

c. **Rights-of-Way, Easements, Permits and Use Tax:** Prior to commencing construction of the Public Improvements, Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of liens and monetary encumbrances and other encumbrances that would unreasonably interfere with the Town's intended use of such right-of-way or easement, 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 monetary encumbrances and other encumbrances that would unreasonably interfere with the Town's intended use of such right-of-way or easement, for all land, property and easements dedicated or conveyed to the Town or for public use. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Public Improvements. Developer shall also pay all applicable use tax due and owing to the Town.

2.2 Construction of Public Improvements: Upon satisfaction of the conditions set forth in Paragraph 2.1, Developer shall construct the Public Improvements at its own expense in accordance with this Agreement, the Final Plat, the Resolution, the Civil Engineering Construction Plans, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. All Public Improvements shall be installed and constructed within the rights-of-way or easements dedicated to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Public Improvements shall be new and both workmanship and materials shall be of good quality. In the event of a conflict between the Civil Engineering Construction Plans and any other applicable requirements relating to the Public Improvements, including without limitation, the Final Plat, the Resolution and the Town's ordinances, regulations and resolutions, the Developer and the Town shall confer to determine the appropriate interpretation. The Town and Developer acknowledge a general presumption that the Civil Engineering Construction Plans control the rights and obligations of the parties, but also recognize that, if at the time the Civil Engineering Construction Plans are approved by the Town, the then-current Town development standards are more stringent than or contradict the Civil Engineering Construction Plans, then Town development standards may be applied. The Town Manager, or the Town Manager's designee, shall make a final determination with respect to the interpretation.

2.3 Construction Schedule: Developer shall construct the Public Improvements in accordance with the schedule of public improvements set forth on **Exhibit C**, attached hereto and incorporated herein by reference ("Schedule of Public Improvements"). Once construction begins, Developer shall keep the Town Public Works Director informed 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 applicable phase of Public Improvements no later than eighteen (18) months from the commencement of the construction of such phase of Public Improvements, unless such completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the Town Manager's written consent to the extension.

2.6 Performance Guarantee: If Developer seeks, and the Town authorizes the issuance of, building permits prior to the completion of certain of the Public Improvements, Developer shall furnish to the Town a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary ("Performance Guarantee") in an amount equal to 110% of the cost of such uncompleted improvements, which cost shall be certified by Developer's professional engineer, licensed in the State of Colorado and approved by the Town Engineer, to secure the installation, improvement and completion of the improvements. The Performance Guarantee shall be released after Initial Acceptance of such improvements.

3. Private Improvements

3.1 Pre-Construction: Prior to commencing construction of the Private Improvements, Developer shall submit a Site Development Plan to the Town. The Site Development Plan shall contain the proposed Private Improvements for the Development, including a plan for detention facilities, an irrigation system, landscaping, fencing, entry-way signage, decorative, non-standard street signs and posts (if any), 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, with the exception of approval of the school bus shelters, which must be approved by the school district. 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.

3.2 **Construction of Private Improvements:** Upon satisfaction of the conditions set forth in Paragraph 3.1, Developer shall construct the Private Improvements at its own expense in accordance with the terms of this Agreement, the Final Plat, the Resolution, the Site Development Plan, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. All landscaping services shall be performed by a professional landscape architect or engineer. Unless otherwise approved by the Town in writing, all materials used for constructing the Private Improvements shall be new and both workmanship and materials shall be of good quality. In the event of a conflict between the Site Development Plan and/or the Civil Engineering Construction Plans and any other applicable requirements relating to the Private Improvements, including without limitation, the Final Plat, the Resolution and the Town's ordinances, regulations and resolutions, the Developer and the Town shall confer to determine the appropriate interpretation. The Town and Developer acknowledge a general presumption that the Site Development Plan and the Civil Engineering Construction Plans control the rights and obligations of the parties, but also recognize that, if at the time of approval of the Site Development Plan or the Civil Engineering Construction Plans, as applicable, Town development standards are more stringent than or contradict the Site Development Plan or the Civil Engineering Construction Plans, respectively, then Town development standards may be applied. The Town Manager, or the Town Manager's designee, shall make a final determination with respect to the interpretation.

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 shall 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, bond 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.

3.5 **Replacement of Private Improvements:** As replacement of the improvements is necessary and warranted over time, the Private Improvements shall be replaced by, as appropriate, the Developer, the homeowner's association or a metropolitan or special district. The Town shall not be responsible for replacement of the Private Improvements.

4. **Dry-Utilities**

4.1 **Utilities:** Developer shall obtain all proper conveyances and arrangements for the installation and provision of the Dry Utilities to serve the Development. Developer shall provide proof of such conveyances and arrangements to the Town, which proof may be in the form of

contracts for such services, no later than the date that the Public Improvements are completed. Notwithstanding the foregoing, the Town shall not withhold issuance of building permits for the Development on the basis that the Dry Utilities, or any portion thereof, have not been completed; provided, however, the Town shall have the right to withhold issuance of certificates of occupancy for any improvements to be served by any Dry Utilities that have not been completed.

4.2 **Easements:** All easements approved by the utility companies shall be submitted to the Town.

ACCEPTANCE OF SUBDIVISION IMPROVEMENTS

5.0 **Phasing of Subdivision Improvements.** Notwithstanding any contrary provision of the Agreement, the Town acknowledges that Developer intends to construct and install the Subdivision Improvements, including without limitation, the Public Improvements, in phases as such Subdivision Improvements are necessary to serve the applicable portion of the Development, which phasing and phases are pursuant to the approved Civil Engineering Construction Plans. The Town agrees that all references in Paragraph 5 of the Agreement to Public Improvements, Private Improvements, Dry Utilities and Subdivision Improvements shall mean a particular phase of those Public Improvements, Private Improvements, Dry Utilities and Subdivision Improvements serving the Development. For the avoidance of doubt, the Town shall, subject to the terms of the Agreement, grant Initial Acceptance and Final Acceptance for a "phase" and shall release and/or reduce, as applicable, the Performance Guarantee and Maintenance Guarantee applicable to such "phase" of the Subdivision Improvements upon Initial Acceptance and Final Acceptance, respectively, notwithstanding that other of the Subdivision Improvements required for other phases of the Development have not been completed.

5.1 **Initial Acceptance:** Developer shall make written application to the Town Manager for initial acceptance of the Public Improvements ("Initial Acceptance"), 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 Initial Acceptance of the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements. If the

Subdivision Improvements are not satisfactory, the Town shall prepare a detailed written description of all Subdivision Improvements which are not in compliance with the Approved Plans, subject to any changes that have been approved by the Town and any changes that have been required by the Town as a result of any unforeseen engineering design issues. Such report shall be delivered to Developer. After curing the defects, Developer shall make a renewed written application to the Town for re-inspection of the Subdivision Improvements, which written application shall contain the items set forth above. The Town shall thereafter use reasonable efforts to promptly re-inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to Initial Acceptance of the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements.

5.2 ***Maintenance Guarantee.*** Contemporaneously with Initial Acceptance of the applicable phase of the Subdivision Improvements, Developer shall provide the Town with a maintenance guarantee in the form of a cash escrow deposited with the Town, a bond 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 Subdivision Improvements. The Maintenance Guarantee shall warrant and guarantee all expenses and costs for maintenance, repairs and replacements of the Subdivision Improvements until Final Acceptance of the same. The Maintenance Guarantee for such phase of the Subdivision Improvements shall be released upon Final Acceptance of the Subdivision Improvements for such phase.

5.3 ***Delivery of Initial Acceptance.*** Upon satisfaction of the conditions set forth above in Paragraphs 5.1 and 5.2, the Town shall provide written notice of Initial Acceptance of the Public Improvements and written approval of the Private Improvements to Developer. The Town may issue written notice of Initial Acceptance of the applicable phase of the Subdivision Improvements prior to completion of certain of the less critical improvements, as determined and agreed upon by the Town in its sole discretion; provided, however, the Town shall not withhold issuance of any notice of Initial Acceptance on the basis of any incomplete landscaping or sidewalks, but the Town may, in its discretion but subject to Paragraph 3.4, withhold the issuance of certificates of occupancy based on such incomplete improvements. The Town may, in its discretion, agree not to withhold the issuance of a notice of Initial Acceptance if the top lift of the asphalt is not complete on the condition that Developer complete the top lift when required by the Town and provide a Performance Guarantee for the improvement as described in Paragraph 2.6, which Performance Guarantee will be released upon completion of the top lift, at which time Developer shall provide a two-year Maintenance Guarantee for the top lift.

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. If, within ten (10) business days after Developer’s receipt of written notice from the Town requesting such maintenance, repairs or replacements, Developer shall not have given written notice to the Town of Developer’s intended corrective action and thereafter commenced such corrective action within a reasonable time, not to exceed an additional five (5) business days, the Town may make

such maintenance, repair or replacement at Developer's expense and shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter or the Town may charge Developer for the costs thereof. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Maintenance Guarantee. Notwithstanding the foregoing, upon Initial Acceptance, the Town shall be responsible for routine maintenance of the Public Improvements (street sweeping, snow removal, etc.) and the Developer shall be responsible for all maintenance, repairs and replacement of the Private Improvements.

5.5 ***Final Acceptance:*** Two (2) years after the Town's Initial Acceptance of the applicable Subdivision Improvements, Developer shall make a written request to the Town Manager for a final inspection of the Subdivision Improvements ("**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, the Town Manager shall provide a written certification of completion and Final Acceptance. If the Town Engineer determines that the Public Improvements are not free of defects in materials and workmanship and have not been repaired and maintained to the extent required, 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. Failure of the Developer to make a timely request for Final Acceptance shall not limit the Town's rights hereunder nor shall it limit the Town's right to utilize or operate the Public Improvements as the Town deems appropriate.

5.6 ***Homeowners Association:*** Prior to Final Acceptance and prior to the sale of lots or homes in the Development, Developer shall establish a homeowners association for the Development or the Developer may establish and utilize a Title 32 metropolitan district in lieu of a homeowners association for the Development. Developer shall provide the Town with proposed covenants, bylaws and articles of incorporation for the homeowners association. Upon written approval of the covenants, bylaws and articles of incorporation by the Town, the same shall be recorded with the appropriate County Clerk and Recorder and the homeowners association shall thereafter be deemed to be established.

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

WATER AND SEWER SERVICE

6.1 Concurrently with entering into this Agreement, 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.

BUILDING PERMITS

7.1 The Town shall not issue building permits or install water meters for the Development until: (1) the Final Plat has been recorded with the Weld County Clerk and Recorder; (2) Developer has paid all applicable use tax due and owing to the Town and all other fees required by the Town, including but not limited to water and tap fees, impact fees, storm drainage fees and cash-in-lieu payments due, if any, to the Thompson School District R2-J or the Weld County School District RE-5J; (3) Developer has received written notice of Initial Acceptance of the Public Improvements and written notice of approval of the Private Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete; (4) meter and curb stop pass inspection; (5) the parties have entered into a Water and Sewer Service Agreement; (6) Developer has established a homeowners association as set forth in Paragraph 5.6 above; and (7) all terms of this Agreement have been faithfully kept by Developer. Notwithstanding Paragraph 7.1 to the contrary, Developer shall not be required to establish a homeowners association for the Development if the Developer has established a Title 32 metropolitan district for the Development responsible for covenant enforcement.

7.2 Notwithstanding any provision of Paragraph 7.1 to the contrary, reference to "Subdivision Improvements" therein shall mean the applicable phase of the Subdivision Improvements and the Town may issue written notice of Initial Acceptance of the applicable phase of the Subdivision Improvements prior to completion of certain of the less critical improvements, as determined and agreed upon by the Town in its sole discretion; provided, however, the Town shall not withhold issuance of any notice of Initial Acceptance on the basis of any incomplete landscaping or sidewalks; and provided, further, however that the Town may, in its discretion, agree not to withhold the issuance of a notice of Initial Acceptance if the top lift of the asphalt is not complete on the condition that Developer complete the top lift when required by the Town and provide a Performance Guarantee for the improvement as described in Paragraph 2.6, which Performance Guarantee will be released upon completion of the top lift, at which time Developer shall provide a two-year Maintenance Guarantee for the top lift. Subject to Paragraph 3.4, the Town shall have the right to withhold issuance of certificates of occupancy for the improvements to be served by any Subdivision Improvements, including landscaping, sidewalks and top lift of asphalt, that have not been completed.

7.3 If the 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. Notwithstanding the foregoing, if, subsequent to Initial Acceptance, parcels of the Property have been sold to third parties and there are multiple Developers, as that term is defined herein, bound

by this Agreement, then the Town agrees not to withhold building permits with respect to the portion of the Development owned and being developed by Developers that are in compliance with this Agreement, subject to Paragraph 4.1 above.

OPERATION STANDARDS

8.1 The operation of construction equipment outside an enclosed structure shall be prohibited between the hours of 8:00 p.m. and, on weekdays, the hour of 7:00 a.m. or, on weekends and legal holidays, the hour of 8:00 a.m. 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. and 7:00 a.m. on weekdays and 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 Each Developer agrees to control the weeds growing within the portion of the Development owned by such Developer, and to use herbicide as permitted by the Town and undertake mowing of the portion of the Development owned by such Developer.

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 shall use commercially reasonable efforts to cause Developer's subcontractors to cooperate with the Town's construction inspectors, including, but not limited to,

ceasing operations upon notice from the Town when winds are of such velocity that the Town has determined, in its reasonable discretion, that blowing dust from the Development 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 Johnstown's municipal code, zoning ordinances, subdivision regulations, landscape guidelines and, if operative with respect to the Development, the approved design guidelines.

9.3 Appropriate design standards must be met including, but not limited to, the following:

- A. Developer shall submit detailed elevations showing architectural features of the proposed dwelling units. Architectural features, elevations and home sites shall have prior approval of the Town. Such approvals shall not be unreasonably withheld.
- B. All proposed multi-family areas and all other areas not planned for detached single family units must be the subject of a Site Development Plan to be reviewed and approved by the Town prior to any construction being performed.
- C. All off-street parking structures or pads shall be provided to the rear of the front setback. Driveways leading to the off-street parking may be constructed within the front setback and may also be used for parking.
- D. In areas built with single family homes, no individual unit shall be built with the same elevation within three (3) of itself on both sides of the street and all units shall have at least a two-car garage, except the multi-family homes.
- E. In areas built with single family homes, at least twenty-five percent (25%) of the facade of each dwelling unit, excluding windows, doors, and garage doors, shall be of masonry, stone, brick, or an equivalent. All roofs shall have thirty (30) year architectural style shingles. Any shingle type or style other than architectural style shingles shall be submitted to the Town

for prior approval, but three-tab conventional asphalt shingle roofing shall not be permitted.

- F. All trails within the Development must be a minimum of ten (10) feet wide and six (6) inches thick and constructed of concrete. Interior sidewalks shall be a minimum of five (5) feet wide, four (4) inches thick and constructed of concrete.
- G. To provide for emergency vehicular access, no structure shall be located in excess of one hundred and fifty feet (150'), excluding cul-de-sacs, from a single point of vehicular access unless an approved temporary second point of vehicular access is provided.
- H. Current Municipal Code required setbacks must be met, including, but not limited to, setback requirements for oil and gas facilities.
- I. A thirty-foot landscape buffer and a ten-foot meandering sidewalk, which shall be six inches thick, shall be constructed along any proposed arterial roads. The landscape buffer shall be landscaped with deciduous trees and evergreens along with deciduous shrub beds and bluegrass in accordance with the Town's approved landscape plan. Curb and gutter shall be provided in the same locations as the before mentioned sidewalks and landscape buffers. All local streets shall have five-foot attached sidewalks and collector streets shall have five-foot detached sidewalks and shall be landscaped with trees and grass.

9.4 The design standards set forth in this Paragraph 9.3 may be modified by Civil Engineering Construction Plans, the Site Development Plan and/or the final development plan (FDP) for the Development. In the event of a conflict between this Paragraph 9.3 and the Civil Engineering Construction Plans, the Site Development Plan and/or the final development plan approved by the Town for the Development, such Civil Engineering Construction Plans, Site Development Plan and final development plan shall control.

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

9.6 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 relating to this Agreement, 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 maintain for itself, and shall cause its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of the Subdivision Improvements to 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), 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. For clarity, Developer shall not be required to procure or maintain insurance for its contractors, subcontractors, representatives or agents, but shall require that its contractors, subcontractors, representatives or agents such insurance be procure and maintain such insurance.

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. For the avoidance of doubt, the indemnification and hold harmless obligations under

Paragraph 10.2 shall apply to each Developer only to the extent of such claims or costs arising in connection with such Developer's act or omission.

10.4 **Tax Liability:** Developer shall pay all outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the Town prior to or at the time of such dedication or conveyance, and shall indemnify and hold the Town harmless from any and all encumbrances, obligations or tax liability incurred prior to the dedication or conveyance to the Town. Any use tax due for construction materials shall be paid prior to construction of any improvements on the Property.

10.5 **Cost Reimbursement to Town:** Developer shall reimburse the Town for the Town's reasonable and customary out-of-pocket costs of professional consultants, including, but not limited to engineers, testing companies and attorneys, engaged by the Town to process and complete the Development. For the avoidance of doubt, if there is more than one Developer at any given time with respect to the Property, the obligation of each Developer under this Paragraph 10.5 of the Agreement shall relate only to the applicable development application or permit application submitted by or on behalf of such Developer.

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, contractors, 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 Initial Acceptance and the default is not timely cured, the Town may draw on the Maintenance Guarantee. If the default relates to the improvement secured by the Performance Guarantee and the default is not timely cured, the Town may draw on the Performance Guarantee. In addition, 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-up for the portion of the Development to be served by the Subdivision Improvements that are the subject of such default, the scope of which is subject to the Town's sole discretion. Notwithstanding these rights and remedies, the Town may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity or pursuant to this Agreement. The Town's remedies shall be cumulative.

11.3 Should Developer default in any obligation under this Agreement, the Town may, in its discretion, complete such Subdivision Improvements at Developer's expense. The Town shall estimate the cost of such improvements and give notice to Developer to pay such cost estimate. The Town shall use such payment for said improvements and refund any money collected in excess of the actual cost of said improvements. Should payment not be made within thirty (30) days of such notice, the Town may assess the amount of the cost estimate, plus ten percent (10%) to defray the cost of collection as provided by state law, to the Property and file a lien against the Property, such lien to have priority over all liens except general taxes and prior special assessments and to be placed upon the tax list for the current year to be collected in the same manner as taxes are collected. The Town may file such lien at any time after said thirty (30) days while Developer is in default of this Agreement.

SPECIAL PROVISIONS

12.1 The Additional Terms, Conditions or Provisions relating to this Development are set forth in **Exhibit B-3**, which is attached hereto, incorporated herein by this reference, and made a part of this Agreement.

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:** A Notice of this Agreement substantially in the form as shown on **Exhibit E** is to be recorded with the approved Final Plat and shall be a covenant running with and against all the Property, property rights and improvements contained within the Development described in **Exhibit A** in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the property on notice as to the terms and obligations herein. No lots, tracts or parcels may be separately conveyed prior to recording such Notice and the Final Plat.

13.4 **Binding Effect:** Unless otherwise provided herein, this Agreement shall be binding upon Developer's heirs, successors, assigns, transferees and any other person or entity acquiring or purchasing any interest in any of the Property described in the attached **Exhibit A**, with the exception of a bona fide residential home buyer of a completed owner-occupied home.

13.5 **Transfer or Assignments:** In the event of a sale or transfer of any portion of the Development, except to a bona fide residential home buyer of a completed owner-occupied home, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless such purchaser or transferee assumes in writing all obligations under this Agreement with respect to such portion of the Development and a copy of such assumption is delivered to the Town.

13.6 **Title and Authority:** Developer expressly warrants and represents to the Town that it is the record owner of the Property subject to matters of record, and further represents and warrants that the undersigned has full power and authority to enter into this Agreement. Developer understands that the Town is relying on the representations and warranties contained herein in approving in entering into this Agreement.

13.7 **Notice:** All notices, consents, applications or other instruments provided for under this Agreement shall be deemed properly given and received: (1) when personally delivered and received, when sent by messenger service, or when forwarded by facsimile or email-delivery, but only upon confirmation of receipt of such facsimile or email; (2) on the next day after deposit for delivery with a nationally-recognized overnight courier service; or (3) three business days after deposit in the United States mail, by certified mail with return receipt requested, postage prepaid and addressed as follows:

TO DEVELOPER:

TF JOHNSTOWN FARMS, L.P.
c/o Starwood Land Advisors, LLC
385 Inverness Parkway, Suite 310
Englewood, CO 80112
Attention: Craig K. Campbell, President West Region
Email: ccampbell@starwoodland.com

And to:

Starwood Land Advisors, LLC
6310 Capital Drive, Suite 130
Lakewood Ranch, FL 34202
Attention: CFO or CEO

TO THE DISTRICT:

Johnstown Farms Metropolitan District
c/o White Bear Ankele Tanaka & Waldron
Attention: Blair Dickhoner, Esq.
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122

JOHNSTOWN FARMS METROPOLITAN DISTRICT

TO TOWN:

TOWN OF JOHNSTOWN

Attention: TOWN MANAGER
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Facsimile: (970) 587-0141
Email: rcello@townofjohnstown.com
And to:

Avi S. Rocklin, Esq.
Law Office of Avi S. Rocklin, LLC
1437 N. Denver Avenue, No. 330
Loveland, CO 80538
Facsimile: (970) 797-1806
Email: avi@rocklinlaw.com

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 pursuant to §§ 24-68-101, *et seq.*, C.R.S. for a period of three (3) years from the date of this Agreement.

13.10 ***Warranty of Developer:*** Developer warrants that the Subdivision Improvements shall be installed in a good and workmanlike manner and in compliance with the Approved Plans, this Agreement, the Final Plat, the Resolution, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations and shall be substantially free of any defects in materials and workmanship.

13.11 ***Governing Law and Venue.*** This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and Municipal Code of the Town of Johnstown.

Venue for any claim, proceeding or action arising out of this Agreement shall be in Larimer or Weld County, Colorado.

13.12 **No Presumption.** Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

13.13 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

13.14 **Compliance with the Law.** Developer shall comply with all federal, state and local laws and regulations in the performance of the obligations under this Agreement.

13.15 **No Third Party Beneficiaries.** No person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services or materials for the Subdivision Improvements.

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

13.17 **Headings.** The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

[signature pages follow this page]

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the parties have set their hands below on this ____ day of _____, 20____.

DEVELOPER:

TF JOHNSTOWN FARMS, L.P., a Delaware limited partnership

By: _____
Name: _____
Title: _____

STATE OF COLORADO _____)
) ss:
[CITY AND] COUNTY OF _____)

The foregoing instrument was acknowledged before me as of the ____ day of _____, 20____, by _____, as _____ of TF JOHNSTOWN FARMS, L.P., a Delaware limited partnership.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

TOWN:

TOWN OF JOHNSTOWN, COLORADO,
a home rule municipal corporation of the
State of Colorado

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Diana Seele, Town Clerk

**APPROVED AS TO THE DISTRICT
OBLIGATIONS CONTAINED IN
PARAGRAPH 1 OF EXHIBIT B-3:**

DISTRICT:

JOHNSTOWN FARMS METROPOLITAN
DISTRICT, a quasi-municipal corporation and
political subdivision of the State of Colorado

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
_____, Secretary

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
THE TOWN OF JOHNSTOWN
(Johnstown Farms Filing No. 3)**

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:	Schedule of Public Improvements
EXHIBIT D:	Irrevocable Letter of Credit Form
EXHIBIT E:	Notice (Approval of Final Plan/Plat and of Development Agreement)
EXHIBIT F:	Recorded Notice

EXHIBIT A

**LEGAL DESCRIPTION
(Property)**

(FOLLOWS THIS PAGE)

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 9;

THENCE ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, SOUTH 89°11'03" EAST A DISTANCE OF 1014.97 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF GREAT WESTERN RAILROAD AS RECORDED IN BOOK 221, PAGE 72 IN THE RECORDS OF THE CLERK AND RECORDER OF SAID WELD COUNTY;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY, NORTH 36°08'54" EAST, A DISTANCE OF 101.74 FEET TO THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY, NORTH 62°56'25" WEST, A DISTANCE OF 71.96 FEET;

THENCE NORTH 46°04'50" WEST, A DISTANCE OF 124.78 FEET;

THENCE NORTH 61°02'08" WEST, A DISTANCE OF 96.44 FEET;

THENCE NORTH 38°13'50" EAST, A DISTANCE OF 97.60 FEET;

THENCE NORTH 00°00'00" EAST, A DISTANCE OF 84.23 FEET;

THENCE NORTH 34°32'15" WEST, A DISTANCE OF 252.50 FEET;

THENCE NORTH 68°44'13" EAST, A DISTANCE OF 104.57 FEET;

THENCE SOUTH 59°40'57" EAST, A DISTANCE OF 166.01 FEET;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 75.86 FEET;

THENCE NORTH 48°25'30" EAST, A DISTANCE OF 98.93 FEET;

THENCE NORTH 00°51'35" WEST, A DISTANCE OF 178.22 FEET;

THENCE NORTH 29°49'13" WEST, A DISTANCE OF 160.73 FEET;

THENCE SOUTH 86°13'22" WEST, A DISTANCE OF 210.38 FEET;

THENCE NORTH 39°39'32" EAST, A DISTANCE OF 314.41 FEET;

THENCE NORTH 30°51'09" WEST, A DISTANCE OF 193.10 FEET;

THENCE NORTH 22°16'35" EAST, A DISTANCE OF 164.82 FEET;

THENCE NORTH 18°23'04" WEST, A DISTANCE OF 163.95 FEET;

THENCE NORTH 38°14'03" EAST, A DISTANCE OF 293.89 FEET;

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10/16/2019

Sheet 1 of 4

THENCE NORTH 73°48'58" EAST, A DISTANCE OF 301.18 FEET;

THENCE NORTH 08°16'54" EAST, A DISTANCE OF 101.30 FEET;

THENCE NORTH 17°05'56" WEST, A DISTANCE OF 312.42 FEET;

THENCE NORTH 00°35'30" EAST, A DISTANCE OF 243.05 FEET TO THE NORTH LINE OF SAID SOUTHWEST QUARTER;

THENCE ALONG SAID NORTH LINE, SOUTH 89°24'30" EAST, A DISTANCE OF 177.69 FEET TO SAID WESTERLY RIGHT-OF-WAY OF GREAT WESTERN RAILROAD;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY THE FOLLOWING FIVE (5) COURSES;

1. SOUTH 04°54'49" EAST, A DISTANCE OF 710.16 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1870.10 FEET;
2. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°42'57", AN ARC LENGTH OF 578.23 FEET, TO A POINT OF TANGENCY;
3. SOUTH 12°48'08" WEST, A DISTANCE OF 482.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1870.10 FEET;
4. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°20'46", AN ARC LENGTH OF 762.00 FEET, TO A POINT OF TANGENCY;
5. SOUTH 36°08'54" WEST, A DISTANCE OF 108.94 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 21.970 ACRES, (957,034 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.

PREPARED BY:

SHAUN D. LEE, PLS 38158
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE. SUITE 1, LITTLETON CO 80122
303.327.7488
AZTEC JOB NO. 54818-37

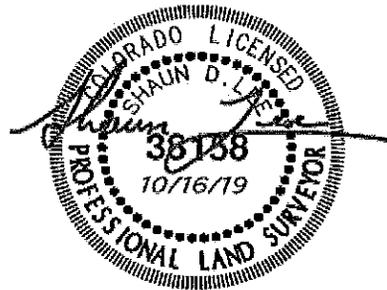
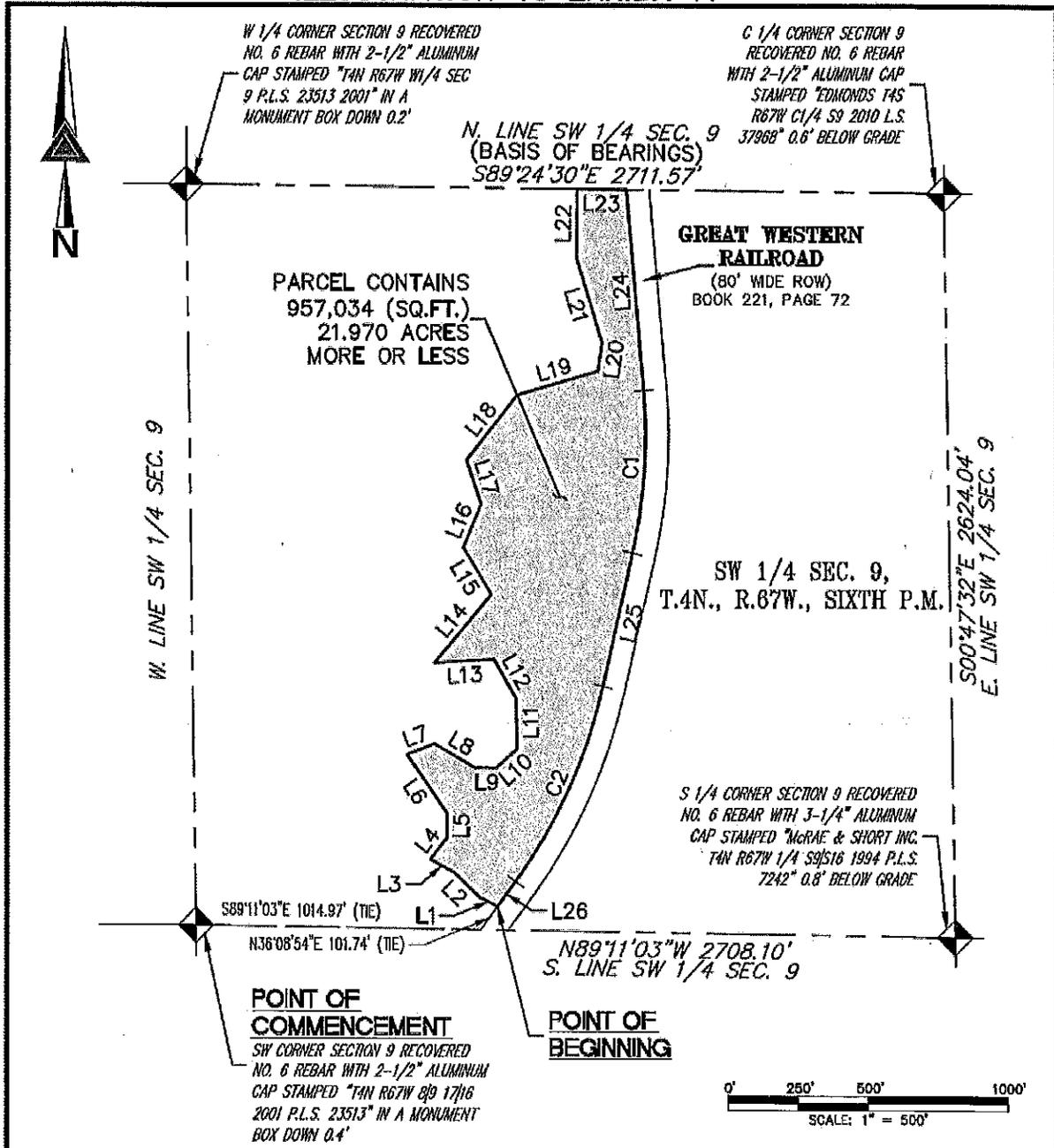


ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH:
DWG NAME: PARCEL A - PLAT.DWG
DWG: CWB CHK: SDL
DATE: 10/16/2019
SCALE: 1" = 500'

AZTEC
CONSULTANTS, INC.

300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303) 715-1898
Fax: (303) 715-1897
www.aztecconsultants.com

Q:\54818-37 - Johnstown Forma Filing No. 3\DWG\EXHIBITS

ILLUSTRATION TO EXHIBIT A
SW 1/4 SEC. 9, T4N, R67W, 6TH P.M.
WELD COUNTY, COLORADO
JOB NUMBER 54818-37 3 OF 4 SHEETS

ILLUSTRATION TO EXHIBIT A

LINE TABLE		
LINE	BEARING	LENGTH
L1	N62°56'25"W	71.96'
L2	N46°04'50"W	124.78'
L3	N61°02'08"W	96.44'
L4	N38°13'50"E	97.60'
L5	N00°00'00"E	84.23'
L6	N34°32'15"W	252.50'
L7	N68°44'13"E	104.57'
L8	S59°40'57"E	166.01'
L9	N90°00'00"E	75.86'
L10	N48°25'30"E	98.93'
L11	N00°51'35"W	178.22'
L12	N29°49'13"W	160.73'
L13	S86°13'22"W	210.38'
L14	N39°39'32"E	314.41'
L15	N30°51'09"W	193.10'
L16	N22°16'35"E	164.82'
L17	N18°23'04"W	163.95'
L18	N38°14'03"E	293.89'
L19	N73°48'58"E	301.18'
L20	N08°16'54"E	101.30'

LINE TABLE		
LINE	BEARING	LENGTH
L21	N17°05'56"W	312.42'
L22	N00°35'30"E	243.05'
L23	S89°24'30"E	177.69'
L24	S04°54'49"E	710.16'
L25	S12°48'08"W	482.40'
L26	S36°08'54"W	108.94'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	17°42'57"	1870.10'	578.23'
C2	23°20'46"	1870.10'	762.00'

NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: _____
 DWG NAME: PARCEL A -- PLAT.DWG
 DWG: CWB CHK: SOL
 DATE: 10/16/2019
 SCALE: N/A



390 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)715-1895
 Fax: (303)715-1897
 WWW.AZTECCONSULTANTS.COM

ILLUSTRATION TO EXHIBIT A
 SW 1/4 SEC. 9, T4N, R67W, 6TH P.M.
 WELD COUNTY, COLORADO
 JOB NUMBER 54818-37 4 OF 4 SHEETS

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER QUARTER CORNER OF SAID SECTION 9, WHENCE THE WEST QUARTER CORNER OF SAID SECTION 9 BEARS NORTH 89°24'30" WEST, A DISTANCE OF 2,711.57 FEET, ALL BEARINGS HEREON ARE REFERENCED TO THIS LINE;

THENCE ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, SOUTH 00°47'32" EAST, A DISTANCE OF 2,624.04 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, NORTH 89°11'03" WEST, A DISTANCE OF 1,595.06 FEET TO THE EASTERLY LINE OF THAT PARCEL OF LAND RECORDED IN BOOK 221 AT PAGE 72 IN THE RECORDS OF THE CLERK AND RECORDER OF SAID WELD COUNTY;

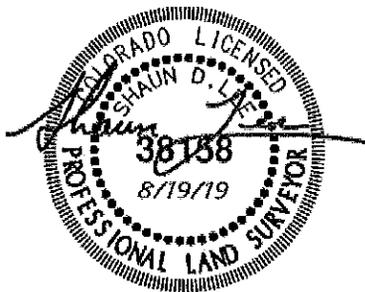
THENCE ALONG SAID EASTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. NORTH 36°08'54" EAST, A DISTANCE OF 153.97 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1,950.10 FEET;
2. NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°20'46", AN ARC LENGTH OF 794.60 FEET;
3. TANGENT TO SAID CURVE, NORTH 12°48'08" EAST, A DISTANCE OF 482.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1,950.10 FEET;
4. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°42'57", AN ARC LENGTH OF 602.97 FEET;
5. TANGENT TO SAID CURVE, NORTH 04°54'49" WEST, A DISTANCE OF 702.44 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9;

THENCE ALONG SAID NORTH LINE, SOUTH 89°24'30" EAST, A DISTANCE OF 1,052.88 FEET TO THE **POINT OF BEGINNING**;

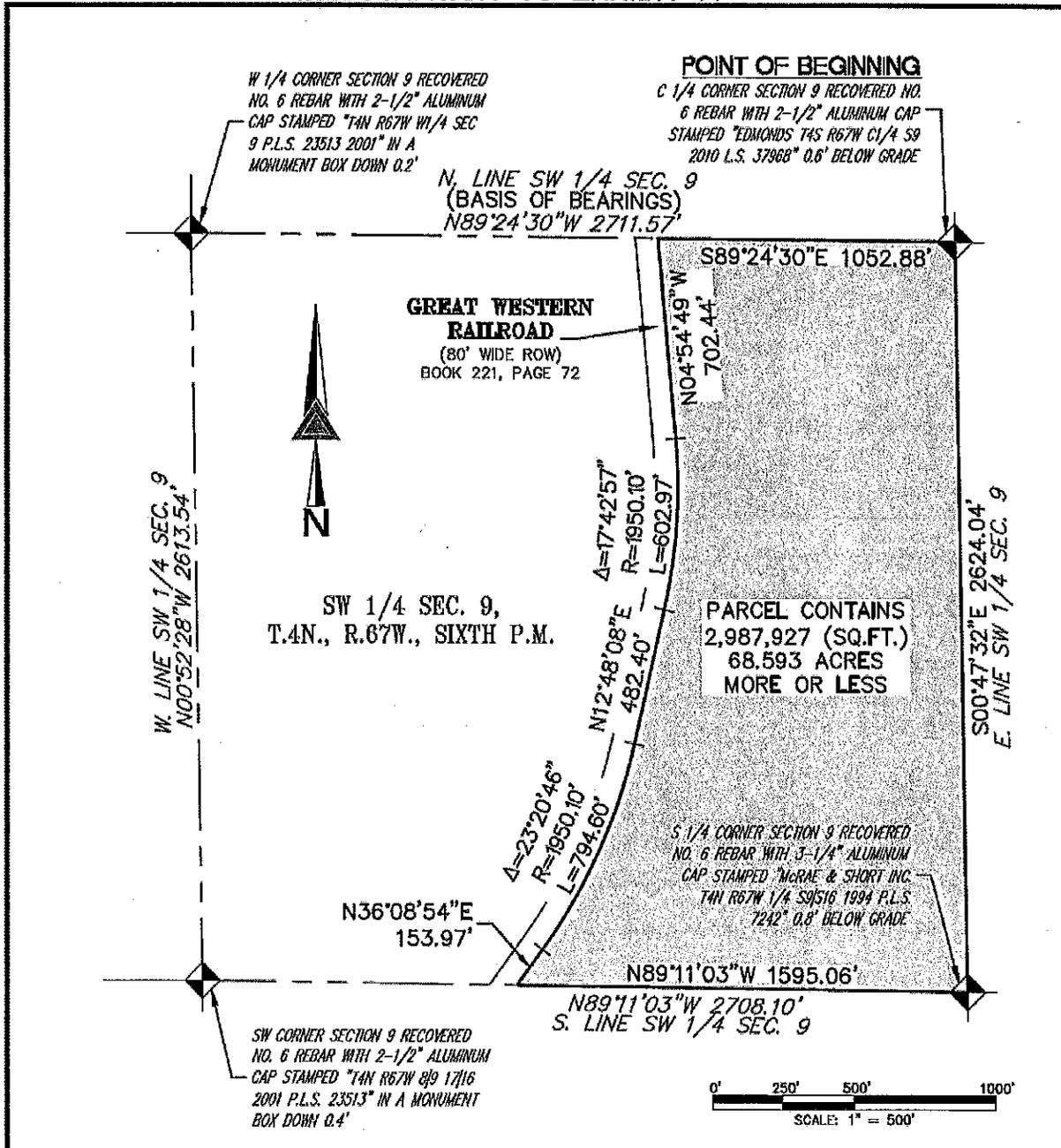
CONTAINING AN AREA OF 68.593 ACRES, (2,987,927 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



SHAUN D. LEE PLS NO. 38158
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PAT# _____
 DWG NAME: PARCEL B.DWG
 DWG: YM CHK: SDL
 DATE: 8/16/2019
 SCALE: 1" = 500'

AZTEC
 CONSULTANTS, INC.
 300 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303) 713-1898
 Fax: (303) 713-1897
 www.aztecconsultants.com
 Q:\54818-37 - Johnstown Forma Filing No. 3\Drawg\EXHIBITS

PARCEL B
 SW 1/4 SEC. 9, T4N, R67W, 6TH P.M.
 WELD COUNTY, COLORADO
 JOB NUMBER 54818-37 2 OF 2 SHEETS

EXHIBIT B-1
PLAT OR PLAN
(FOLLOWS THIS PAGE)

EXHIBIT B-2

(RESOLUTION APPROVING PLAT OR PLAN)

(FOLLOWS THIS PAGE)

EXHIBIT B-3

ADDITIONAL TERMS, CONDITIONS OR PROVISIONS

1. **Inverted Siphon.** Developer shall construct a temporary inverted siphon per the approved construction plans for the sanitary sewer outfall serving the Development. Developer shall also install the gravity sanitary sewer main with the Phase 1 Improvements under the Little Thompson River per the approved construction plans. The inverted siphon shall be operated and maintained by the District and shall remain in service until the Town's future regional lift station is constructed or other means for accepting the flows from the Development is constructed by the Town or others. The District shall abandon the inverted siphon in place after flushing and removal of all sewerage and flow filling the abandoned section once the Town's regional outfall is constructed and the flows are transferred to the gravity sanitary sewer main. The District shall be required to monitor and maintain the inverted siphon until a minimum velocity of three feet per second can be achieved or the Town's regional improvements are operational and can be connected to, whichever occurs first; upon and after the occurrence of such event, the Town shall be required to monitor and maintain the inverted siphon. The Town shall continue to be responsible for all operation and maintenance of the Lift Station. The inverted siphon improvements referenced herein shall be completed, with Initial Acceptance provided by the Town, prior to the issuance of any building permits for the Development.

2. **Regional Sewer Improvements.** When appropriate, the Town requires developers to install collection mains or lift station improvements larger than needed to adequately serve the development in order to serve offsite properties and the Town would either reimburse the developer for the costs or provide a reimbursement agreement to the developer to recover such costs from future development. In lieu of this requirement, and because regional improvements are needed, the Town will be constructing regional improvements to the sewer system, including, but not limited to, improvements to the regional lift station located at or near the Johnstown Farms development and/or improvements involving other means for accepting the sewer flows from the Development ("Regional Improvements"). Developer shall pay the Town cash-in-lieu for a portion of the costs of the Regional Improvements in an amount equal to \$9,500 per single family home within the Development (the "Regional Improvements Fee"). The Town acknowledges and agrees that the Town intends to adopt and impose a generally applicable Regional Improvements Fee, in an amount to be determined by the Town, on all other future development of property located within the same sanitary sewer basin as the Property (the "Fee Ordinance"). The Town hereby agrees that Developer's payment of the Regional Improvements Fee shall fully satisfy Developer's obligations relating to the Regional Improvements and the Town hereby waives the Fee Ordinance with respect to the Property. Unless otherwise agreed by the Town Manager in writing, each Regional Improvements Fee shall be paid at the time of building permit issuance for the applicable single family home.

3. **Railroad Crossing for Weld County Road 46 ½.** Developer shall pay the Town cash-in-lieu in the amount of \$150,000.00 for the Town to construct future improvements to the existing railroad crossing of Weld County Road 46 ½ (the "Crossing Fee"). The Town hereby

agrees that Developer's payment of the Crossing Fee shall fully satisfy Developer's obligations relating to such railroad crossing. Unless otherwise agreed by the Town Manager in writing, the Crossing Fee shall be paid prior to the issuance of any building permits for the Development.

5. **Weld County Road 46 ½ Road Section.** Developer shall make improvements to Weld County Road 46 ½ pursuant to the approved Civil Engineering Construction Plans. Developer shall have no obligation or liability with respect to the construction of improvements to the Weld County Road 46 ½ bridge adjacent to the Property, and in lieu of such construction, shall pay the Town cash-in-lieu in the amount of \$275,000 for the Town to construct such future Weld County Road 46 ½ bridge improvements adjacent to the Property (the "Bridge Fee"). The Town hereby agrees that Developer's payment of the Bridge Fee shall fully satisfy Developer's and the Subject Property's (defined below) obligations relating to improvements to such bridge. Unless otherwise agreed by the Town Manager in writing, the Bridge Fee shall be paid prior to the Town's Initial Acceptance of the Public Improvements.

6. **Electric Utility Weld County Road 46 ½.** As part of the Public Improvements, Developer shall underground the electric utility on the south side of Weld County Road 46 ½ adjacent to the Property.

7. **Regional Sidewalk Connectivity.** Connectivity of a regional trail system is a priority for the Town and, accordingly, the Developer shall construct, in accordance with the approved Civil Engineering Construction Plans, a continuous sidewalk along the southern one-half of the Weld County Road 46 ½ adjacent to the Property, which includes Tract A of the Property, as part of the Public Improvements. The Town, at its sole expense, shall promptly repair any damage to such sidewalk resulting from the Town's Weld County Road 46 ½ roadway and bridge construction.

8. **Subject Property.** For purposes of Paragraph 5 of this Exhibit B-3, the Subject Property shall mean and include the following real property:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, EXCEPTING THEREFROM THAT PARCEL RECORDED IN BOOK 221 AT PAGE 72; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL A:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 9, WHENCE THE CENTER QUARTER CORNER OF SAID SECTION 9, BEARS SOUTH 89°24'30" EAST, A DISTANCE OF 2711.57 FEET, ALL BEARINGS HEREON ARE REFERENCED TO THIS LINE;

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, SOUTH 89°24'30" EAST, A DISTANCE OF 1,578.31 FEET TO THE WESTERLY LINE OF SAID PARCEL OF LAND RECORDED IN BOOK 221 AT PAGE 72;

THENCE ALONG SAID WESTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. SOUTH 04°54'49" EAST, A DISTANCE OF 710.16 FEET TO THE TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1,870.10 FEET;
 2. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°42'57", AN ARC LENGTH OF 578.23 FEET;
 3. TANGENT TO SAID CURVE, SOUTH 12°48'08" WEST, A DISTANCE OF 482.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1,870.10 FEET;
 4. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°20'46", AN ARC LENGTH OF 762.00 FEET;
 5. TANGENT TO SAID CURVE SOUTH 36°08'54" WEST, A DISTANCE OF 210.68 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9;
- THENCE ALONG SAID SOUTH LINE, NORTH 89°11'03" WEST, A DISTANCE OF 1014.97 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 9;
- THENCE ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, NORTH 00°52'28" WEST, A DISTANCE OF 2613.54 FEET TO THE POINT OF BEGINNING;
- CONTAINING AN AREA OF 3,886,785 SQUARE FEET OR 89.228 ACRES, MORE OR LESS.

TOGETHER WITH;

PARCEL B:

BEGINNING AT THE CENTER QUARTER CORNER OF SAID SECTION 9, WHENCE THE WEST QUARTER CORNER OF SAID SECTION 9, BEARS NORTH 89°24'30" WEST, A DISTANCE OF 2711.57 FEET, ALL BEARINGS HEREON ARE REFERENCED TO THIS LINE;

THENCE ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, SOUTH 00°47'32" EAST, A DISTANCE OF 2624.04 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, NORTH 89°11'03" WEST, A DISTANCE OF 1595.06 FEET TO THE EASTERLY LINE OF SAID PARCEL OF LAND RECORDED IN BOOK 221 AT PAGE 72;

THENCE ALONG SAID EASTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. THENCE NORTH 36°08'54" EAST, A DISTANCE OF 153.97 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1,950.10 FEET;
2. NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°20'46", AN ARC LENGTH OF 794.60 FEET;
3. TANGENT TO SAID CURVE, NORTH 12°48'08" EAST, A DISTANCE OF 482.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1,950.10 FEET;
4. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°42'57", AN ARC LENGTH OF 602.97 FEET;

5. TANGENT TO SAID CURVE, NORTH 04°54'49" WEST, A DISTANCE OF 702.44 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9;

THENCE ALONG SAID NORTH LINE, SOUTH 89°24'30" EAST, A DISTANCE OF 1052.88 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 2,987,927 SQUARE FEET OR 68.593 ACRES, MORE OR LESS.

PARCELS A AND B CONTAINING A TOTAL AREA OF 6,874,712 SQUARE FEET OR 157.821 ACRES, MORE OR LESS.

9. **Two Rivers Racing MX – Leahy Family Farm.** Because homeowners in the Development may be impacted by noise from the neighboring motocross track, Two Rivers Racing MX – Leahy Family Farm, located at 22437 Weld County Road 19, Milliken Weld County, CO 80543, the Developer agrees to negotiate in good faith with owner of the commercial entity, Two Rivers, LLC, a Colorado limited liability company, with respect to the installation of noise mitigation measures on the motocross track property to minimize the impacts of the motocross track use on the homeowners, which noise mitigation may include the construction of berms. The Developer further agrees to record a written notice to run with the Property, in substantially the same form that is attached to the Agreement as **Exhibit F**, in order to endeavor to ensure that buyers are aware of the presence of Two Rivers Racing MX – Leahy Family Farm when they purchase a home.

EXHIBIT C
SCHEDULE OF PUBLIC IMPROVEMENTS
(FOLLOWS THIS PAGE)



Johnstown Farms Filing 3
Public Improvements - Phase 1 - 60' Lots
Opinion of Probable Cost Estimate
 October 22, 2019
 JN: 18012.02

Storm Sewer	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
18" RCP (0-8' depth)	572	LF	\$65.00	\$16,737	\$20,456	\$37,193
24" RCP (0-8' depth)	747	LF	\$85.00	\$28,577	\$34,927	\$63,504
30" RCP (0-8' depth)	54	LF	\$105.00	\$2,570	\$3,142	\$5,712
36" RCP (0-8' depth)	739	LF	\$125.00	\$41,569	\$50,806	\$92,375
48" RCP (0-8' depth)	289	LF	\$175.00	\$22,735	\$27,787	\$50,523
38X24" HERCP (0-8' depth)	216	LF	\$120.00	\$11,680	\$14,276	\$25,956
4' Dia. Manhole	3	EA	\$3,750.00	\$5,063	\$6,188	\$11,250
5' Dia. Manhole	9	EA	\$5,000.00	\$20,250	\$24,750	\$45,000
Box Base Manhole	2	EA	\$18,000.00	\$16,200	\$19,800	\$36,000
5' Type 'R' Inlet	1	EA	\$6,000.00	\$2,700	\$3,300	\$6,000
10' Type 'R' Inlet	5	EA	\$8,500.00	\$19,125	\$23,375	\$42,500
20' Type 'R' Inlet	2	EA	\$18,000.00	\$16,200	\$19,800	\$36,000
48" Flared End Section	1	EA	\$4,000.00	\$1,800	\$2,200	\$4,000
Type 'C' Inlet	2	EA	\$4,500.00	\$4,050	\$4,950	\$9,000
Pond Outlet Structure	25.8	CY	\$950.00	\$11,030	\$13,481	\$24,510
Type 'L' Rip Rap	298	CY	\$85.00	\$11,399	\$13,932	\$25,330
Type 'M' Rip Rap	58.1	CY	\$105.00	\$2,748	\$3,358	\$6,106
Spillway Crest	8.5	CY	\$950.00	\$3,834	\$4,441	\$8,075
Gravel Service Access Road (6" Thick)	121	SY	\$7.00	\$383	\$468	\$850
100 Year Overflow Box	1	EA	\$25,000.00	\$11,250	\$13,750	\$25,000
Forebay A1	15	CY	\$950.00	\$6,455	\$7,890	\$14,345
Forebay A2	4.2	CY	\$950.00	\$1,796	\$2,195	\$3,990
Rectangular Trickle Channel	132	LF	\$40.00	\$2,376	\$2,904	\$5,280
V Trickle Channel	91.0	LF	\$20.00	\$819	\$1,001	\$1,820
Storm Sewer Subtotal				\$261,143	\$319,175	\$580,319

Water	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Connect to Existing Main	2	EA	\$3,000.00	\$2,700	\$3,300	\$6,000
Fire Hydrant Assembly	8	EA	\$6,750.00	\$24,300	\$29,700	\$54,000
6" CL200 DR 14	218	LF	\$36.00	\$3,532	\$4,316	\$7,848
8" CL200 DR 14	5,302	LF	\$39.00	\$93,050	\$113,728	\$206,778
10" CL200 DR 14	2,577	LF	\$46.00	\$53,344	\$65,198	\$118,542
12" CL200 DR 14	40	LF	\$53.00	\$954	\$1,166	\$2,120
8" - 11 1/4" Bend w/ Kick Block	15	EA	\$550.00	\$3,713	\$4,538	\$8,250
8" - 22 1/2" Bend w/ Kick Block	1	EA	\$550.00	\$248	\$303	\$550
8" - 45° Bend w/ Kick Block	2	EA	\$550.00	\$495	\$605	\$1,100
10" - 45° Bend w/ Kick Block	3	EA	\$650.00	\$878	\$1,073	\$1,950
10" - 11° Bend w/ Kick Block	3	EA	\$650.00	\$878	\$1,073	\$1,950
10" - 22° Bend w/ Kick Block	1	EA	\$650.00	\$293	\$358	\$650
10" - 45° Bend w/ Kick Block	3	EA	\$650.00	\$878	\$1,073	\$1,950
10" - 90° Bend w/ Kick Block	3	EA	\$650.00	\$878	\$1,073	\$1,950
10"x8" Reducer	2	EA	\$650.00	\$585	\$715	\$1,300
8" Cross Fitting	1	EA	\$750.00	\$338	\$413	\$750



Johnstown Farms Filing 3
Public Improvements - Phase 1 - 60' Lots
Opinion of Probable Cost Estimate
October 22, 2019
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8" x 8" Tee Fitting	1	EA	\$750.00	\$338	\$413	\$750
8" x 6" Tee Fitting	5	EA	\$650.00	\$1,463	\$1,788	\$3,250
10"x6" Tee Structure	3	EA	\$800.00	\$1,080	\$1,320	\$2,400
12"x8" Tee Structure	1	EA	\$950.00	\$428	\$523	\$950
8" Gate Valve	24	EA	\$1,850.00	\$19,980	\$24,420	\$44,400
10" Gate Valve	12	EA	\$2,500.00	\$13,500	\$16,500	\$30,000
12" Gate Valve	2	EA	\$3,250.00	\$2,925	\$3,575	\$6,500
10" Plug w/ Kick Block	1	EA	\$850.00	\$383	\$468	\$850
3/4" Water Service w/ Meter Pit	53	EA	\$1,900.00	\$45,315	\$55,385	\$100,700
Pressure Testing	8,137	LF	\$0.80	\$2,929	\$3,580	\$6,510
2" Irrigation Tap & Vault	1	EA	\$7,500.00	\$3,375	\$4,125	\$7,500
Water Bore & Casing	430	LF	\$350.00	\$67,725	\$82,775	\$150,500
Water Lowering	2	EA	\$3,500.00	\$3,150	\$3,850	\$7,000
20" Ductile Iron Pipe	180	LF	\$250.00	\$20,250	\$24,750	\$45,000
Foam Insulation	9	EA	\$500.00	\$2,025	\$2,475	\$4,500
Water Subtotal				\$369,899	\$452,099	\$821,998

Sanitary Sewer	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	COST
Connect to Existing Main	1	EA	\$2,000.00	\$900	\$1,100	\$2,000
8" SDR-35 PVC (0-16' depth)	4,420	LF	\$36.00	\$71,604	\$87,516	\$159,120
Extra Depth San (15'-18' depth) pipe size 8"	746	LF	\$40.00	\$13,428	\$16,412	\$29,840
4' Dia. Manhole (0-12' Depth)	8	EA	\$3,500.00	\$12,600	\$15,400	\$28,000
4' Dia. Manhole (12-16' Depth)	26	EA	\$7,500.00	\$87,750	\$107,250	\$195,000
4' Dia. Manhole (16-20' Depth)	1	EA	\$10,000.00	\$4,500	\$5,500	\$10,000
4' Dia. Manhole (20-24' Depth)	1	EA	\$12,000.00	\$5,400	\$6,600	\$12,000
6' Dia. Manhole (0-12' Depth)	1	EA	\$10,000.00	\$4,500	\$5,500	\$10,000
6' Dia. Manhole (12-16' Depth)	0	EA	\$14,000.00	\$0	\$0	\$0
4" Service w/ wye, cap, bend	86	EA	\$1,400.00	\$54,180	\$66,220	\$120,400
Inverted Siphon Pipe & Casings	219	LF	\$350.00	\$34,414	\$42,061	\$76,475
60" x 60" CDOT Box Base MH	2	EA	\$15,000.00	\$13,500	\$16,500	\$30,000
4" PVC - Inverted Siphon	109	LF	\$35.00	\$1,721	\$2,103	\$3,824
6" PVC - Inverted Siphon	109	LF	\$45.00	\$2,212	\$2,704	\$4,916
27" PVC	10	LF	\$200.00	\$900	\$1,100	\$2,000
Sanitary Encasement	1	EA	\$1,500.00	\$675	\$825	\$1,500
Sanitary Sewer Subtotal				\$307,609	\$375,966	\$683,575



Johnstown Farms Filing 3
Public Improvements - Phase 1 - 60' Lots
 Opinion of Probable Cost Estimate
 October 22, 2019
 JN: 18012.02

Street Improvements	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Mountable Curb Gutter & Sidewalk	5,502	LF	\$32.00	\$79,232	\$96,839	\$176,070
Subgrade Prep (Mountable Curb, Gutter, Walk)	4,585	SY	\$2.50	\$5,158	\$6,305	\$11,463
Vertical 6" Curb & Gutter	1,640	LF	\$18.00	\$13,285	\$16,237	\$29,522
Subgrade Prep (Vertical Curb & Gutter)	273	SY	\$2.50	\$308	\$376	\$683
Asphalt (Full depth - 6" section)	61,052	SY-IN	\$4.00	\$109,894	\$134,315	\$244,208
Asphalt (6" section) - WCR 46 1/2	32,277	SY-IN	\$4.00	\$58,099	\$71,010	\$129,109
Base Course (6" Section - WCR 46 1/2)	5,380	SY	\$7.00	\$16,945	\$20,711	\$37,657
Subgrade Prep - Asphalt	10,175	SY	\$2.50	\$11,447	\$13,991	\$25,438
Subgrade Prep - Asphalt (WCR 46 1/2)	5,380	SY	\$2.50	\$6,052	\$7,397	\$13,449
6" Concrete Crosspan	4	EA	\$3,500.00	\$6,300	\$7,700	\$14,000
Subgrade Prep for Crosspans	6	EA	\$400.00	\$1,080	\$1,320	\$2,400
10' Concrete Crosspan	2	EA	\$4,500.00	\$4,050	\$4,950	\$9,000
4" Concrete Walk (6" thick)	848	SF	\$5.25	\$2,003	\$2,448	\$4,452
10' Concrete Walk (6" thick)	10,010	SF	\$5.25	\$23,648	\$28,903	\$52,551
Subgrade Prep - Concrete Walk	10,858	SF	\$2.00	\$9,772	\$11,943	\$21,715
Handicap Ramp	17	EA	\$1,250.00	\$9,563	\$11,688	\$21,250
Handicap Ramp (Mid Block)	4	EA	\$1,250.00	\$2,250	\$2,750	\$5,000
Signage	18	EA	\$650.00	\$5,265	\$6,435	\$11,700
Street Light (Local)	7	EA	\$4,000.00	\$12,600	\$15,400	\$28,000
Street Light (Collector)	2	EA	\$7,500.00	\$6,750	\$8,250	\$15,000
Final Adjust Manholes (12" or less)	48	EA	\$550.00	\$11,880	\$14,520	\$26,400
Final Adjust Valve Boxes	35	EA	\$275.00	\$4,331	\$5,294	\$9,625
Striping	1	LS	\$15,000.00	\$6,750	\$8,250	\$15,000
Type VII Barricade	44	LF	\$250.00	\$4,960	\$6,063	\$11,023
Street Subtotal				\$411,622	\$503,094	\$914,715
Total Cost				\$1,350,273	\$1,650,333	\$3,000,607

Notes:
 The above costs and quantities are approximate for estimating purposes.



Johnstown Farms Filing 3
Public Improvements - Phase 1 - 50' Lots
Opinion of Probable Cost Estimate
October 22, 2019
JN: 18012.02

Water	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Fire Hydrant Assembly	4	EA	\$6,750.00	\$12,150	\$14,850	\$27,000
6" CL200 DR 14	96	LF	\$36.00	\$1,555	\$1,901	\$3,456
8" CL200 DR 14	1,412	LF	\$39.00	\$24,781	\$30,287	\$55,068
8" - 1.1 1/4" Bend w/ Kick Block	5	EA	\$550.00	\$1,238	\$1,513	\$2,750
8" x 8" Tee Fitting	2	EA	\$750.00	\$675	\$825	\$1,500
8" x 6" Tee Fitting	4	EA	\$650.00	\$1,170	\$1,430	\$2,600
8" Gate Valve	10	EA	\$1,850.00	\$8,325	\$10,175	\$18,500
3/4" Water Service w/ Meter Pit	51	EA	\$1,900.00	\$43,805	\$53,295	\$96,900
Pressure Testing	1,508	LF	\$0.80	\$543	\$664	\$1,206
2" Irrigation Tap & Vault	1	EA	\$7,500.00	\$3,375	\$4,125	\$7,500
Water Subtotal				\$97,416	\$119,064	\$216,480

Sanitary Sewer	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
8" SDR-35 PVC (0-15' depth)	1,378	LF	\$36.00	\$22,324	\$27,284	\$49,608
4' Dia. Manhole (0-12' Depth)	8	EA	\$3,500.00	\$12,600	\$15,400	\$28,000
4" Service w/ wye, cap, bend	49	EA	\$1,400.00	\$30,870	\$37,730	\$68,600
Sanitary Sewer Subtotal				\$66,794	\$80,414	\$146,208

Street Improvements	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Mountable Curb Gutter & Sidewalk	3,321	LF	\$32.00	\$47,823	\$58,450	\$106,274
Subgrade Prep (Mountable Curb, Gutter, Walk)	2,768	SY	\$2.50	\$3,113	\$3,805	\$6,919
Subgrade Prep for Outfall Curb & Gutter	1	SY	\$2.50	\$1	\$1	\$3
Asphalt (Full depth - 6" section)	36,433	SY-IN	\$4.00	\$65,579	\$80,153	\$145,732
Subgrade Prep - Asphalt	6,072	SY	\$2.50	\$6,831	\$8,349	\$15,180
6' Concrete Crossspan	1	EA	\$3,500.00	\$1,575	\$1,925	\$3,500
Subgrade Prep for Crossspans	1	EA	\$400.00	\$180	\$220	\$400
Handicap Ramp	4	EA	\$1,250.00	\$2,250	\$2,750	\$5,000
Handicap Ramp (Mid Block)	2	EA	\$1,250.00	\$1,125	\$1,375	\$2,500
Signage	2	EA	\$650.00	\$585	\$715	\$1,300
Street Light (Local)	2	EA	\$4,000.00	\$3,600	\$4,400	\$8,000
Final Adjust Manholes (12" or less)	9	EA	\$550.00	\$2,228	\$2,723	\$4,950
Final Adjust Valve Boxes	21	EA	\$275.00	\$2,599	\$3,176	\$5,775
Street Subtotal				\$137,480	\$168,043	\$305,533
Total Cost				\$300,699	\$367,521	\$668,221

Notes:
The above costs and quantities are approximate for estimating purposes.



Johnstown Farms Filing 3
Public Improvements - Phase 2 - 60' Lots
 Opinion of Probable Cost Estimate
 October 22, 2019
 JN: 18012.02

Storm Sewer	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
18" RCP (0-8' depth)	167	LF	\$65.00	\$4,894	\$5,981	\$10,875
24" RCP (0-8' depth)	53	LF	\$85.00	\$2,035	\$2,487	\$4,522
30" RCP (0-8' depth)	41	LF	\$105.00	\$1,945	\$2,378	\$4,323
36" RCP (0-8' depth)	994	LF	\$125.00	\$55,864	\$68,303	\$124,188
45x29" HERCP (0-8' depth)	101	LF	\$180.00	\$8,157	\$9,969	\$18,126
4' Dia. Manhole	2	EA	\$3,750.00	\$3,375	\$4,125	\$7,500
5' Dia. Manhole	6	EA	\$5,000.00	\$13,500	\$16,500	\$30,000
6' Dia. Manhole	1	EA	\$7,000.00	\$3,150	\$3,850	\$7,000
Box Base Manhole	1	EA	\$18,000.00	\$8,100	\$9,900	\$18,000
5' Type 'R' Inlet	1	EA	\$6,000.00	\$2,700	\$3,300	\$6,000
10' Type 'R' Inlet	1	EA	\$8,500.00	\$3,825	\$4,675	\$8,500
15' Type 'R' Inlet	2	EA	\$12,500.00	\$11,250	\$13,750	\$25,000
20' Type 'R' Inlet	1	EA	\$18,000.00	\$8,100	\$9,900	\$18,000
Type 'C' Inlet	1	EA	\$4,500.00	\$2,025	\$2,475	\$4,500
Storm Sewer Subtotal				\$128,940	\$157,593	\$286,534

Water	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Fire Hydrant Assembly	3	EA	\$6,750.00	\$9,113	\$11,138	\$20,250
6" CL200 DR 14	57	LF	\$36.00	\$923	\$1,129	\$2,052
8" CL200 DR 14	2,059	LF	\$39.00	\$36,135	\$44,166	\$80,301
8" - 11 1/4" Bend w/ Kick Block	7	EA	\$550.00	\$1,733	\$2,118	\$3,850
8" - 45° Bend w/ Kick Block	2	EA	\$550.00	\$495	\$605	\$1,100
8" x 8" Tee Fitting	4	EA	\$750.00	\$1,350	\$1,650	\$3,000
8" x 6" Tee Fitting	3	EA	\$650.00	\$878	\$1,073	\$1,950
8" Gate Valve	7	EA	\$1,850.00	\$5,828	\$7,123	\$12,950
3/4" Water Service w/ Meter Pit	66	EA	\$1,900.00	\$56,430	\$68,970	\$125,400
Pressure Testing	2,116	LF	\$0.80	\$762	\$931	\$1,693
Foam Insulation	3	EA	\$500.00	\$675	\$825	\$1,500
Water Subtotal				\$114,321	\$139,725	\$254,046

Sanitary Sewer	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
8" SDR-35 PVC (0-15' depth)	1,913	LF	\$36.00	\$30,997	\$37,886	\$68,883
4' Dia. Manhole (0-12' Depth)	6	EA	\$3,500.00	\$9,450	\$11,550	\$21,000
4' Dia. Manhole (12-16' Depth)	6	EA	\$7,500.00	\$20,250	\$24,750	\$45,000
4" Service w/ wye, cap, bend	38	EA	\$1,400.00	\$23,940	\$29,260	\$53,200
Sanitary Sewer Subtotal				\$84,637	\$103,446	\$188,083



Johnstown Farms Filing 3
Public Improvements - Phase 2 - 60' Lots
Opinion of Probable Cost Estimate
 October 22, 2019
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Street Improvements	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Mountable Curb Gutter & Sidewalk	5,792	LF	\$32.00	\$83,401	\$101,935	\$185,336
Subgrade Prep (Mountable Curb, Gutter, Walk)	4,826	SY	\$2.50	\$5,430	\$6,636	\$12,066
Subgrade Prep for Outfall Curb & Gutter	1	SY	\$2.50	\$1	\$1	\$3
Asphalt (Full depth - 6' section)	64,348	SY-IN	\$4.00	\$115,827	\$141,566	\$257,393
Subgrade Prep - Asphalt	10,725	SY	\$2.50	\$12,065	\$14,746	\$26,812
Handicap Ramp	6	EA	\$1,250.00	\$3,375	\$4,125	\$7,500
Handicap Ramp (Mid Block)	3	EA	\$1,250.00	\$1,688	\$2,063	\$3,750
Signage	5	EA	\$650.00	\$1,463	\$1,788	\$3,250
Street Light (Local)	4	EA	\$4,000.00	\$7,200	\$8,800	\$16,000
Final Adjust Manholes (12" or less)	14	EA	\$550.00	\$3,465	\$4,235	\$7,700
Final Adjust Valve Boxes	9	EA	\$275.00	\$1,114	\$1,361	\$2,475
			Street Subtotal	\$235,028	\$287,256	\$522,285
			Total Cost	\$562,925	\$688,020	\$1,250,948



Johnstown Farms Filing 3
Public Improvements - Phase 2 - 50' Lots
Opinion of Probable Cost Estimate
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Water	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Fire Hydrant Assembly	3	EA	\$6,750.00	\$9,113	\$11,138	\$20,250
6" CL200 DR 14	63	LF	\$36.00	\$1,021	\$1,247	\$2,268
8" CL200 DR 14	2321	LF	\$39.00	\$40,734	\$49,785	\$90,519
8" - 11 1/4" Bend w/ Kick Block	2	EA	\$550.00	\$495	\$605	\$1,100
8" - 45° Bend w/ Kick Block	2	EA	\$550.00	\$495	\$605	\$1,100
8" x 8" Tee Fitting	2	EA	\$750.00	\$675	\$825	\$1,500
8" x 6" Tee Fitting	3	EA	\$650.00	\$878	\$1,073	\$1,950
8" Gate Valve	11	EA	\$1,850.00	\$9,158	\$11,193	\$20,350
3/4" Water Service w/ Meter Pit	71	EA	\$1,900.00	\$60,705	\$74,195	\$134,900
Pressure Testing	2,384	LF	\$0.80	\$858	\$1,049	\$1,907
Foam Insulation	1	EA	\$500.00	\$225	\$275	\$500
Water Subtotal				\$124,355	\$151,989	\$276,344

Sanitary Sewer	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
8" SDR-35 PVC (0-16' depth)	2,131	LF	\$36.00	\$34,522	\$42,194	\$76,716
4' Dia. Manhole (0-12' Depth)	7	EA	\$3,500.00	\$11,025	\$13,475	\$24,500
4' Dia. Manhole (12-16' Depth)	2	EA	\$7,500.00	\$6,750	\$8,250	\$15,000
4" Service w/ wye, cap, bend	68	EA	\$1,400.00	\$42,840	\$52,360	\$95,200
Sanitary Sewer Subtotal				\$95,137	\$116,279	\$211,416

Street Improvements	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Mountable Curb Gutter & Sidewalk	4,201	LF	\$32.00	\$60,501	\$73,945	\$134,446
Subgrade Prep (Mountable Curb, Gutter, Walk)	3,501	SY	\$2.50	\$3,939	\$4,814	\$8,753
Vertical 6" Curb & Gutter	0	LF	\$18.00	\$0	\$0	\$0
Asphalt (Full depth - 6" section)	46,771	SY-IN	\$4.00	\$84,187	\$102,896	\$187,083
Subgrade Prep - Asphalt	7,795	SY	\$2.50	\$8,770	\$10,718	\$19,488
Handicap Ramp	4	EA	\$1,250.00	\$2,250	\$2,750	\$5,000
Handicap Ramp (Mid Block)	2	EA	\$1,250.00	\$1,125	\$1,375	\$2,500
Signage	4	EA	\$650.00	\$1,170	\$1,430	\$2,600
Street Light (Local)	4	EA	\$4,000.00	\$7,200	\$8,800	\$16,000
Final Adjust Manholes (12" or less)	10	EA	\$550.00	\$2,475	\$3,025	\$5,500
Final Adjust Valve Boxes	10	EA	\$275.00	\$1,238	\$1,513	\$2,750
Street Subtotal				\$172,854	\$211,266	\$384,120
Total Cost				\$392,346	\$479,534	\$871,880

Notes:
 The above costs and quantities are approximate for estimating purposes.



Johnstown Farms Filing 3
Public Improvements - Summary
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Storm Sewer	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
18" RCP (0-8' depth)	740	LF	\$65	\$21,630	\$26,437	\$48,068
24" RCP (0-8' depth)	800	LF	\$85	\$30,611	\$37,414	\$68,026
30" RCP (0-8' depth)	96	LF	\$105	\$4,516	\$5,519	\$10,035
36" RCP (0-8' depth)	1733	LF	\$125	\$97,453	\$119,109	\$216,563
48" RCP (0-8' depth)	289	LF	\$175	\$22,735	\$27,787	\$50,523
38X24" HERCP (0-8' depth)	216	LF	\$120	\$11,680	\$14,276	\$25,956
45x29" HERCP (0-8' depth)	101	LF	\$180	\$8,157	\$9,969	\$18,126
4' Dia. Manhole	5	EA	\$3,750	\$8,438	\$10,313	\$18,750
5' Dia. Manhole	15	EA	\$5,000	\$33,750	\$41,250	\$75,000
6' Dia. Manhole	1	EA	\$7,000	\$3,150	\$3,850	\$7,000
Box Base Manhole	3	EA	\$18,000	\$24,300	\$29,700	\$54,000
5' Type 'R' Inlet	2	EA	\$8,000	\$5,400	\$6,600	\$12,000
10' Type 'R' Inlet	6	EA	\$8,500	\$22,950	\$28,050	\$51,000
15' Type 'R' Inlet	2	EA	\$12,500	\$11,250	\$13,750	\$25,000
20' Type 'R' Inlet	3	EA	\$18,000	\$24,300	\$29,700	\$54,000
48" Flared End Section	1	EA	\$4,000	\$1,800	\$2,200	\$4,000
Type 'C' Inlet	3	EA	\$4,500	\$6,075	\$7,425	\$13,500
Pond Outlet Structure	26	CY	\$950	\$11,030	\$13,481	\$24,510
Type 'L' Rip Rap	298	CY	\$85	\$11,399	\$13,932	\$25,330
Type 'M' Rip Rap	58	CY	\$105	\$2,748	\$3,358	\$6,106
Spillway Crest	9	CY	\$950	\$3,634	\$4,441	\$8,075
Gravel Service Access Road (6" Thick)	121	SY	\$7	\$383	\$468	\$850
100 Year Overflow Box	1	EA	\$25,000	\$11,250	\$13,750	\$25,000
Forebay A1	15	CY	\$950	\$6,455	\$7,890	\$14,345
Forebay A2	4	CY	\$950	\$1,796	\$2,195	\$3,990
Rectangular Trickle Channel	132	LF	\$40	\$2,376	\$2,904	\$5,280
V Trickle Channel	91	LF	\$20	\$819	\$1,001	\$1,820
Storm Sewer Subtotal				\$390,083	\$476,768	\$866,853

Water	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Connect to Existing Main	2	EA	\$3,000	\$2,700	\$3,300	\$6,000
Fire Hydrant Assembly	18	EA	\$6,750	\$54,675	\$66,825	\$121,500
6" CL200 DR 14	434	LF	\$36	\$7,031	\$8,593	\$15,624
8" CL200 DR 14	11094	LF	\$39	\$194,700	\$237,966	\$432,666
10" CL200 DR 14	2577	LF	\$46	\$53,344	\$65,198	\$118,542
12" CL200 DR 14	40	LF	\$53	\$954	\$1,166	\$2,120
8" - 11 1/2° Bend w/ Kick Block	29	EA	\$550	\$7,178	\$8,773	\$15,950
8" - 22 1/2° Bend w/ Kick Block	1	EA	\$550	\$248	\$303	\$550
8" - 45° Bend w/ Kick Block	6	EA	\$550	\$1,485	\$1,815	\$3,300
10" - 45° Bend w/ Kick Block	3	EA	\$650	\$878	\$1,073	\$1,950
10" - 11° Bend w/ Kick Block	3	EA	\$650	\$878	\$1,073	\$1,950
10" - 22° Bend w/ Kick Block	1	EA	\$650	\$293	\$358	\$650

Redland

WHERE GREAT PLACES BEGIN

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10" - 45° Bend w/ Kick Block	3	EA	\$650	\$878	\$1,073	\$1,950
10" - 90° Bend w/ Kick Block	3	EA	\$650	\$878	\$1,073	\$1,950
10"x8" Reducer	2	EA	\$650	\$585	\$715	\$1,300
8" Cross Fitting	1	EA	\$750	\$338	\$413	\$750
8" x 8" Tee Fitting	9	EA	\$750	\$3,038	\$3,713	\$6,750
8" x 6" Tee Fitting	15	EA	\$650	\$4,388	\$5,363	\$9,750
10"x6" Tee Structure	3	EA	\$800	\$1,080	\$1,320	\$2,400
12"x8" Tee Structure	1	EA	\$950	\$428	\$523	\$950
8" Gate Valve	52	EA	\$1,850	\$43,290	\$52,910	\$96,200
10" Gate Valve	12	EA	\$2,500	\$13,500	\$16,500	\$30,000
12" Gate Valve	2	EA	\$3,250	\$2,925	\$3,575	\$6,500
10" Plug w/ Kick Block	1	EA	\$850	\$383	\$468	\$850
3/4" Water Service w/ Meter Pit	241	EA	\$1,900	\$206,055	\$251,845	\$457,900
Pressure Testing	14145	LF	\$1	\$5,092	\$6,224	\$11,316
2" Irrigation Tap & Vault	2	EA	\$7,500	\$6,750	\$8,250	\$15,000
Water Bore & Casing	430	LF	\$350	\$67,725	\$82,775	\$150,500
Water Lowering	2	EA	\$3,500	\$3,150	\$3,850	\$7,000
20" Ductile Iron Pipe	180	LF	\$250	\$20,250	\$24,750	\$45,000
Foam Insulation	13	EA	\$500	\$2,925	\$3,575	\$6,500
			Water Subtotal	\$708,016	\$865,352	\$1,573,368

Sanitary Sewer	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Connect to Existing Main	1	EA	\$2,000	\$900	\$1,100	\$2,000
8" SDR-35 PVC (0-15' depth)	9,842	LF	\$36	\$159,447	\$194,880	\$354,327
Extra Depth San (15'-18' depth) pipe size 8"	746	LF	\$40	\$13,428	\$16,412	\$29,840
4' Dia. Manhole (0-12' Depth)	29	EA	\$3,500	\$45,675	\$55,825	\$101,500
4' Dia. Manhole (12-16' Depth)	34	EA	\$7,500	\$114,750	\$140,250	\$255,000
4' Dia. Manhole (16-20' Depth)	1	EA	\$10,000	\$4,500	\$5,500	\$10,000
4' Dia. Manhole (20-24' Depth)	1	EA	\$12,000	\$5,400	\$6,600	\$12,000
6' Dia. Manhole (0-12' Depth)	1	EA	\$10,000	\$4,500	\$5,500	\$10,000
4' Service w/ wye, cap, bend	241	EA	\$1,400	\$151,830	\$185,570	\$337,400
Inverted Siphon Pipe & Casings	219	LF	\$350	\$34,414	\$42,061	\$76,475
60" x 60" CDOT Box Base MH	2	LS	\$15,000	\$13,500	\$16,500	\$30,000
4" PVC - Inverted Siphon	109	LF	\$35	\$1,721	\$2,103	\$3,824
6" PVC - Inverted Siphon	109	LF	\$45	\$2,212	\$2,704	\$4,916
27" PVC	10	LF	\$200	\$900	\$1,100	\$2,000
Sanitary Encasement	1	EA	\$1,500	\$675	\$825	\$1,500
			Sanitary Sewer Subtotal	\$553,852	\$676,930	\$1,230,782



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Street Improvements	QUANTITY	UNIT	UNIT PRICE	ESTIMATED MATERIAL COST	ESTIMATED LABOR COST	TOTAL COST
Mountable Curb Gutter & Sidewalk	18,816	LF	\$32	\$270,956	\$331,169	\$602,125
Subgrade Prep (Mountable Curb, Gutter, Walk)	15,680	SY	\$3	\$17,640	\$21,560	\$39,201
Vertical 6" Curb & Gutter	1,640	LF	\$18	\$13,285	\$16,237	\$29,522
Subgrade Prep (Vertical Curb & Gutter)	273	SY	\$3	\$308	\$376	\$683
Subgrade Prep for Outfall Curb & Gutter	2	SY	\$3	\$2	\$3	\$5
Asphalt (Full depth - 6" section)	208,604	SY-IN	\$4	\$375,487	\$458,929	\$834,416
Asphalt (6" section) - WCR 46 1/2	32,277	SY-IN	\$4	\$58,099	\$71,010	\$129,109
Base Course (6" Section - WCR 46 1/2)	5,380	SY	\$7	\$16,945	\$20,711	\$37,657
Subgrade Prep - Asphalt	34,767	SY	\$3	\$39,113	\$47,805	\$86,918
Subgrade Prep - Asphalt (WCR 46 1/2)	5,380	SY	\$3	\$6,052	\$7,397	\$13,449
6' Concrete Crossspan	5	EA	\$3,500	\$7,875	\$9,625	\$17,500
Subgrade Prep for Crossspans	7	EA	\$400	\$1,260	\$1,540	\$2,800
10' Concrete Crossspan	2	EA	\$4,500	\$4,050	\$4,950	\$9,000
4' Concrete Walk (6" thick)	848	SF	\$5	\$2,003	\$2,448	\$4,452
10' Concrete Walk (6" thick)	10,010	SF	\$5	\$23,648	\$28,903	\$52,551
Subgrade Prep - Concrete Walk	10,858	SF	\$2	\$9,772	\$11,943	\$21,715
Handicap Ramp	31	EA	\$1,250	\$17,438	\$21,313	\$38,750
Handicap Ramp (Mid Block)	11	EA	\$1,250	\$6,188	\$7,563	\$13,750
Signage	29	EA	\$650	\$8,483	\$10,368	\$18,850
Street Light (Local)	17	EA	\$4,000	\$30,600	\$37,400	\$68,000
Street Light (Collector)	2	EA	\$7,500	\$6,750	\$8,250	\$15,000
Final Adjust Manholes (12" or less)	81	EA	\$550	\$20,048	\$24,503	\$44,550
Final Adjust Valve Boxes	75	EA	\$275	\$9,281	\$11,344	\$20,625
Striping	1	LS	\$15,000	\$6,750	\$8,250	\$15,000
Type VII Barricade	44	LF	\$250	\$4,960	\$6,063	\$11,023
Street Subtotal				\$956,993	\$1,169,658	\$2,126,651
Total Cost				\$2,608,943	\$3,188,709	\$5,797,654

Notes:

The above costs and quantities are approximate for estimating purposes.

EXHIBIT D

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 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.

EXHIBIT E

NOTICE

Please take notice that on the ____ day of _____, 20__, the Town Council of the Town of Johnstown approved the final plat for the development known as Johnstown Farms Filing No. 3, which development was submitted and processed in accordance with the Town of Johnstown's Municipal Code. In conjunction therewith, the Town Council also approved a Development Agreement dated _____, 20__, between the Town Johnstown and the Developer, pursuant to and under which certain rights and obligations of the Developer will pass on to subsequent owners, heirs, assigns and transferees of the below-described property. The Development Agreement is on file and may be reviewed in the office of the Town Clerk of the Town of Johnstown. The subject property for which such Development Agreement applies is described as follows:

LEGAL DESCRIPTION ATTACHED

DATED this _____ day of _____, 20__.

Town Clerk

Town Manager

EXHIBIT F

RECORDED NOTICE

**JOHNSTOWN FARMS, FILING NO. 3
PUBLIC DISCLOSURE**

Pursuant to the Subdivision Development and Improvement Agreement
by and among the Town of Johnstown, TF Johnstown Farms, L.P.
and the Johnstown Farms Metropolitan District

Purchasers of property in the Johnstown Farms, Filing No. 3 subdivision should be aware that, as of the date of the recording of this notice, the subdivision is located adjacent to Two Rivers Racing MX – Leahy Family Farm, a motocross track. The motocross track is owned by Two Rivers, LLC, a Colorado limited liability company, and is located at 22437 Weld County Road 19, Milliken Weld County, CO 80543. This notice will automatically terminate and be of no further force or effect upon and after the cessation of the motocross track use on such adjacent property.

**Water and Sewer
Service Agreement**

**WATER AND SEWER SERVICE AGREEMENT
JOHNSTOWN FARMS, FILING NO. 3**

THIS WATER AND SEWER SERVICE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, by and between **TF JOHNSTOWN FARMS, L.P.**, a Delaware limited partnership ("Developer") and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, ("Town"), collectively sometimes referred to as the "Parties".

WITNESSETH:

WHEREAS, Developer is the owner of approximately 158 acres of land located in the SW1/4 of Section 9, Township 4 North, Range 67 West of the 6th P.M., Weld County, Colorado and described more particularly in Exhibit A, attached hereto and incorporated herein by this reference ("Subject Property"); and

WHEREAS, the Subject Property has been annexed to the Town pursuant to the Annexation Agreement dated on or about June 18, 2001; and

WHEREAS, a portion of the Subject Property is being developed as Johnstown Farms, Filing No. 3, described more particularly in Exhibit B, attached hereto and incorporated herein by this reference ("Johnstown Farms, Filing No. 3"); and

WHEREAS, in connection with the Final Plat for Johnstown Farms, Filing No. 3, Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water demand and sewer demand and a current commitment by the Town for water and sewer service for Johnstown Farms, Filing No. 3.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code, as amended, ("Ordinance"), Developer has submitted to the Town a preliminary Water and Sewer Demand Analysis, including a Water Budget dated September 18, 2018. Said analysis was received by the Town, is on file with the Town and is hereby accepted by the Town as modified by the April 24, 2019 Memorandum from the Town water engineer, including the limitations imposed by the September 18, 2018 Water Budget. The analysis provided by Developer, as revised, addresses the projected water and sewer demands for Johnstown Farms, Filing No. 3, as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
241 Single Family Detached Residential Units (in-house only)	79.60	3.98
16.97 Acres Residential Landscape Irrigation	42.50	36.12
6.41 Acres Parks and Other Irrigation	10.08	8.57
Total	132.18	48.67

2. Water Rights Dedication. Due to a previous dedication of raw water in connection with Johnstown Farms, Filing No. 1, Developer has a 103.6 acre-feet credit balance. Developer has not developed Johnstown Farms, Filing No. 2, and no water has been dedicated for that portion of the development. The 103.6 acre-feet credit balance is not sufficient to satisfy the raw water needed for Johnstown Farms, Filing No. 3. Developer shall thus dedicate to the Town four and one-half (4.5) shares of the Consolidated Home Supply Ditch and Reservoir Company, out of the twelve and one-half (12.5) shares represented by Certificate No. 6793, and be entitled to a raw water credit in the amount of 28.8 acre-feet for the dedicated shares. This Agreement is conditioned upon, and shall not be valid, until the dedication is made and accepted by the Town.

Because the water represented by Certificate No. 6793 has not been changed to include municipal use by the Town, the Developer shall receive a dedication credit of 6.4 acre-feet per share, or 12.8 single family equivalents per share, as provided in the Ordinance. However, if Developer obtains a dry-up covenant in a form acceptable to the Town prior to the commencement of a water court case to change the water represented by Certificate No. 6793 to municipal use, the Developer shall be entitled to an additional credit of 1.6 acre-feet per share, or 3.2 single family equivalents per share, which credit may be used by the Developer anywhere within the Subject Property. In the Town's sole discretion, the Town may agree to provide the additional credit to the Developer if the Developer obtains a dry-up covenant in a form acceptable to the Town subsequent to the commencement of a water court case, but prior to entry of a decree. If the Developer obtains a dry-up covenant as provided herein and is entitled to additional raw water credit, the Parties shall execute an amendment to this Agreement.

3. Pre-Paid Taps. Developer has previously purchased from the Town a total of three hundred and fifty-nine (359) water and sewer tap pairs (the "Pre-Purchased Taps"), of which two hundred and eighty (280) were used for Johnstown Farms, Filing No. 1. The remaining seventy-nine (79) unused Pre-Purchased Taps may be applied towards any water and sewer tap fees applicable to Johnstown Farms, Filing No. 3.

4. Commitment to serve. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to Johnstown Farms, Filing No. 3, up to 132.18 acre-feet of raw water per year, of which up to 79.60 acre-feet per year is for potable water supply for in-home use together with the corresponding sewer service, and up to 52.58 acre-feet is for residential and other landscape irrigation, as stated in the September 18, 2018 Water Budget.

5. Future review of water usage and dedication requirements. In accordance with Section 13-68(h) of the Ordinance, the Town reserves the right to review actual water usage within the Subject Property, including, but not limited to Johnstown Farms, Filing No. 3, at a point in time after water usage has been established, to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments based on actual water usage.

6. Payment of Water Court Transfer fees. Upon execution of this Agreement, Developer shall pay to the Town the sum of Seventy-Nine Thousand Two Hundred dollars (\$79,200.00) as payment of the water court transfer fees required by the Ordinance. This payment is only for the required dedication of 132.18 acre-feet per year of estimated water demand and estimated consumptive use of 48.67 acre-feet per year (264 SFB) for Johnstown Farms, Filing No. 3. Pursuant to Paragraph 5 above, if future review requires additional dedication of water, additional water court transfer fees will be required at the time of dedication. Further, in accordance with the Ordinance, additional fees will be required in connection with future development of any portion of the Subject Property pursuant to a future mutual agreement of the Parties in accordance with the Town's Ordinance.

7. Notices. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

TF Johnstown Farms, LP
c/o Starwood Land Advisors, LLC
Attn: Craig K. Campbell
President West Region
385 Inverness Parkway, Suite 310
Englewood, Colorado 80112

WITH A COPY TO:

Starwood Land Ventures, LLC
6310 Capital Drive, Suite 130
Lakewood Ranch, Florida 34202

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
450 S. Parish Ave.
Johnstown, CO 80534

WITH A COPY TO:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, # 330
Loveland, Colorado 80538

Peter J. Ampe
Hill & Robbins, P.C.
1660 Lincoln St., Suite 2720
Denver, CO 80264

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

8. **Default.** In the event of default by either Party hereunder the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the non-defaulting Party desires to seek recourse, the Parties shall participate in mediation, the costs of which shall be shared equally by both Parties, at a location, unless the Parties otherwise agree, that is in the Town, Larimer County, Weld County or downtown Denver. If mediation is not successful after a ninety-day period, either Party may then commence an action in a court of competent jurisdiction as provided in Paragraph 15, and shall be entitled to such remedies as are provided by law, including the Town's ordinances.

9. **Successors and assigns.** The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

10. **Amendment or modification.** No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

11. **Attorney's fees and costs.** If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

12. **Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

13. **Headings for convenience only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

14. **Non severability.** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

15. **Choice of laws.** This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action shall be in Larimer or Weld County, State of Colorado.

16. **Entire agreement and Authorization.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement. Each of the undersigned represents to the others that he/she is authorized by his/her respective entity to execute this Agreement on behalf of that entity.

17. **Recordation.** This Agreement may be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado, and, effective as

of the date of such recordation, this Agreement shall run with the Subject Property, shall be binding upon the Parties hereto and the permitted successors and assigns of the Developer and shall constitute notice of this Agreement to all persons or entities not parties hereto.

[Signatures follow on separate pages]

*IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

DEVELOPER:

TF JOHNSTOWN FARMS, L.P., a Delaware limited partnership

By: TF Holdings GP, L.L.C., a Delaware limited liability company, its general partner

By: [Signature]
Name: Craig Campbell
Title: Authorized Signatory

STATE OF COLORADO)
[CITY AND] COUNTY OF Archuleta) ss:

The foregoing instrument was acknowledged before me as of the 13th day of November, 2019, by Craig Campbell, as Authorized Signatory of TF Holdings GP, L.L.C., a Delaware limited liability company, as general partner of TF JOHNSTOWN FARMS, L.P., a Delaware limited partnership.

WITNESS my hand and official seal.

[Signature]
Notary Public

My Commission Expires: 4-24-2023

STEPHANIE ANN KAHN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20044016086
MY COMMISSION EXPIRES APRIL 24, 2023

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Diana Seele, Town Clerk

EXHIBIT A
Legal Description of Subject Property

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH P.M., TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, EXCEPTING THEREFROM THAT PARCEL RECORDED IN BOOK 221 AT PAGE 72; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL A:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 9, WHENCE THE CENTER QUARTER CORNER OF SAID SECTION 9, BEARS SOUTH 89°24'30" EAST, A DISTANCE OF 2711.57 FEET, ALL BEARINGS HEREON ARE REFERENCED TO THIS LINE;

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, SOUTH 89°24'30" EAST, A DISTANCE OF 1,578.31 FEET TO THE WESTERLY LINE OF SAID PARCEL OF LAND RECORDED IN BOOK 221 AT PAGE 72;

THENCE ALONG SAID WESTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. SOUTH 04°54'49" EAST, A DISTANCE OF 710.16 FEET TO THE TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1,870.10 FEET;
2. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°42'57", AN ARC LENGTH OF 578.23 FEET;
3. TANGENT TO SAID CURVE, SOUTH 12°48'08" WEST, A DISTANCE OF 482.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1,870.10 FEET;
4. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°20'46", AN ARC LENGTH OF 762.00 FEET;
5. TANGENT TO SAID CURVE SOUTH 36°08'54" WEST, A DISTANCE OF 210.68 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9;

THENCE ALONG SAID SOUTH LINE, NORTH 89°11'03" WEST, A DISTANCE OF 1014.97 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 9;

THENCE ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, NORTH 00°52'28" WEST, A DISTANCE OF 2613.54 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 3,886,785 SQUARE FEET OR 89.228 ACRES, MORE OR LESS.

TOGETHER WITH;

PARCEL B:

BEGINNING AT THE CENTER QUARTER CORNER OF SAID SECTION 9, WHENCE THE WEST QUARTER CORNER OF SAID SECTION 9, BEARS NORTH 89°24'30" WEST, A DISTANCE OF 2711.57 FEET, ALL BEARINGS HEREON ARE REFERENCED TO THIS LINE;

THENCE ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, SOUTH 00°47'32" EAST, A DISTANCE OF 2624.04 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, NORTH 89°11'03" WEST, A DISTANCE OF 1595.08 FEET TO THE EASTERLY LINE OF SAID PARCEL OF LAND RECORDED IN BOOK 221 AT PAGE 72;

THENCE ALONG SAID EASTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. THENCE NORTH 36°08'54" EAST, A DISTANCE OF 153.97 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1,950.10 FEET;
2. NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°20'46", AN ARC LENGTH OF 794.60 FEET;
3. TANGENT TO SAID CURVE, NORTH 12°48'08" EAST, A DISTANCE OF 482.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1,950.10 FEET;
4. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°42'57", AN ARC LENGTH OF 602.97 FEET;
5. TANGENT TO SAID CURVE, NORTH 04°54'49" WEST, A DISTANCE OF 702.44 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9;

THENCE ALONG SAID NORTH LINE, SOUTH 89°24'30" EAST, A DISTANCE OF 1052.88 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 2,987,927 SQUARE FEET OR 68.593 ACRES, MORE OR LESS.

PARCELS A AND B CONTAINING A TOTAL AREA OF 6,874,712 SQUARE FEET OR 157.821 ACRES, MORE OR LESS.

EXHIBIT B
Legal Description of Johnstown Farms, Filing No. 3

[follows this page]

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 9;

THENCE ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, SOUTH 89°11'03" EAST A DISTANCE OF 1014.97 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF GREAT WESTERN RAILROAD AS RECORDED IN BOOK 221, PAGE 72 IN THE RECORDS OF THE CLERK AND RECORDER OF SAID WELD COUNTY;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY, NORTH 36°08'54" EAST, A DISTANCE OF 101.74 FEET TO THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY, NORTH 62°56'25" WEST, A DISTANCE OF 71.96 FEET;

THENCE NORTH 46°04'50" WEST, A DISTANCE OF 124.78 FEET;

THENCE NORTH 61°02'08" WEST, A DISTANCE OF 96.44 FEET;

THENCE NORTH 38°13'50" EAST, A DISTANCE OF 97.60 FEET;

THENCE NORTH 00°00'00" EAST, A DISTANCE OF 84.23 FEET;

THENCE NORTH 34°32'15" WEST, A DISTANCE OF 252.50 FEET;

THENCE NORTH 68°44'13" EAST, A DISTANCE OF 104.57 FEET;

THENCE SOUTH 59°40'57" EAST, A DISTANCE OF 166.01 FEET;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 75.86 FEET;

THENCE NORTH 48°25'30" EAST, A DISTANCE OF 98.93 FEET;

THENCE NORTH 00°51'35" WEST, A DISTANCE OF 178.22 FEET;

THENCE NORTH 29°49'13" WEST, A DISTANCE OF 160.73 FEET;

THENCE SOUTH 86°13'22" WEST, A DISTANCE OF 210.38 FEET;

THENCE NORTH 39°39'32" EAST, A DISTANCE OF 314.41 FEET;

THENCE NORTH 30°51'09" WEST, A DISTANCE OF 193.10 FEET;

THENCE NORTH 22°16'35" EAST, A DISTANCE OF 164.82 FEET;

THENCE NORTH 18°23'04" WEST, A DISTANCE OF 163.95 FEET;

THENCE NORTH 38°14'03" EAST, A DISTANCE OF 293.89 FEET;

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11/1/2019

Sheet 1 of 4

THENCE NORTH 73°48'58" EAST, A DISTANCE OF 301.18 FEET;

THENCE NORTH 08°16'54" EAST, A DISTANCE OF 101.30 FEET;

THENCE NORTH 17°05'56" WEST, A DISTANCE OF 312.42 FEET;

THENCE NORTH 00°35'30" EAST, A DISTANCE OF 243.05 FEET TO THE NORTH LINE OF SAID SOUTHWEST QUARTER;

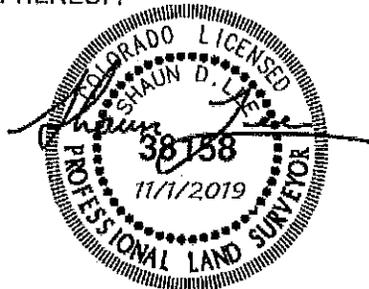
THENCE ALONG SAID NORTH LINE, SOUTH 89°24'30" EAST, A DISTANCE OF 177.69 FEET TO SAID WESTERLY RIGHT-OF-WAY OF GREAT WESTERN RAILROAD;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY THE FOLLOWING FIVE (5) COURSES;

1. SOUTH 04°54'49" EAST, A DISTANCE OF 710.16 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1870.10 FEET;
2. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°42'57", AN ARC LENGTH OF 578.23 FEET, TO A POINT OF TANGENCY;
3. SOUTH 12°48'08" WEST, A DISTANCE OF 482.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1870.10 FEET;
4. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°20'46", AN ARC LENGTH OF 762.00 FEET, TO A POINT OF TANGENCY;
5. SOUTH 36°08'54" WEST, A DISTANCE OF 108.94 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 21.970 ACRES, (957,034 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



PREPARED BY:

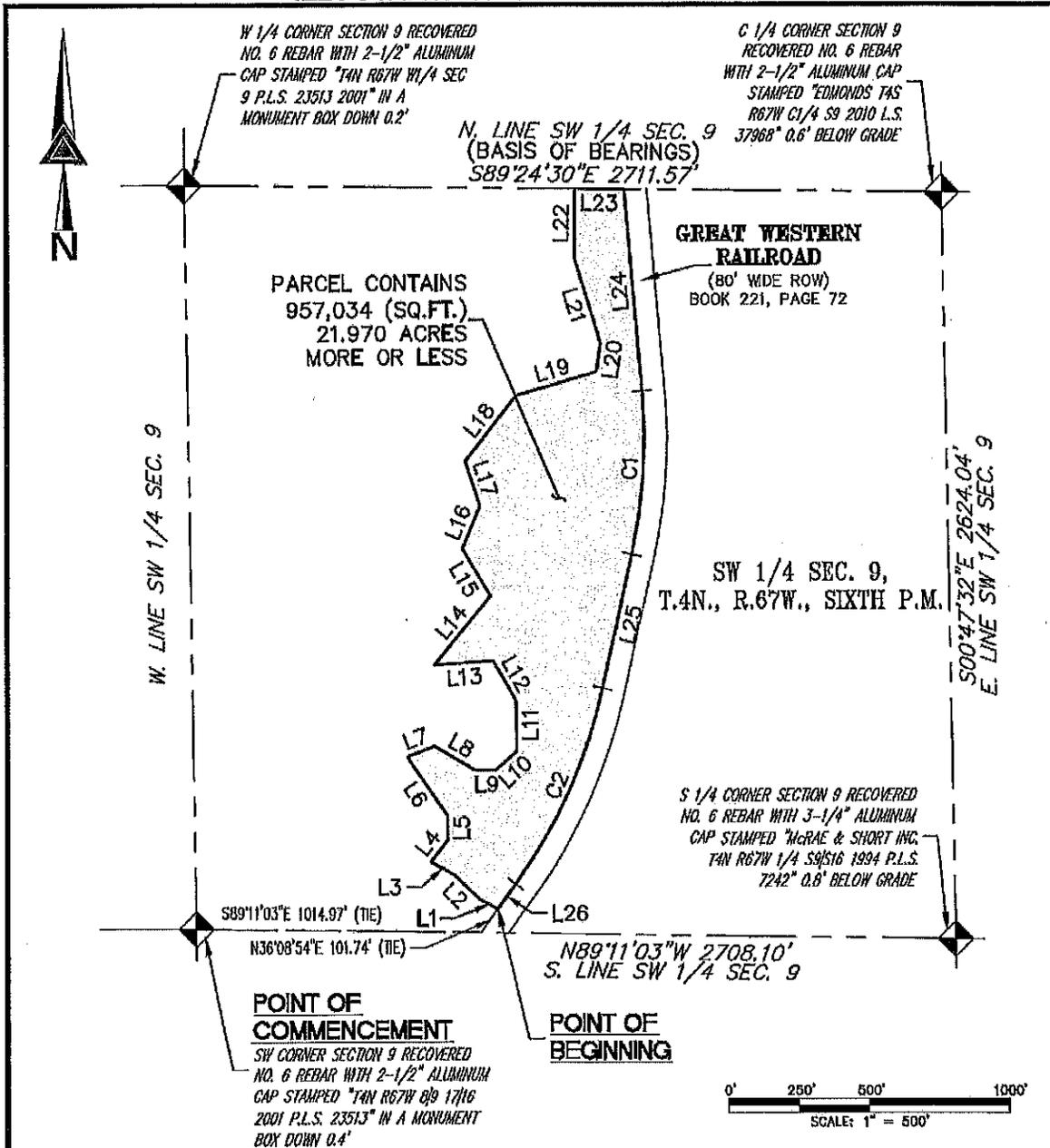
SHAUN D. LEE, PLS 38158
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE. SUITE 1, LITTLETON CO 80122
303.327.7488
AZTEC JOB NO. 54818-37

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11/1/2019

Sheet 2 of 4

ILLUSTRATION TO EXHIBIT B



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH:
 DWG NAME: PARCEL A -- PLAT.DWG
 DWG: CWM CHK: SLD
 DATE: 10/16/2019
 SCALE: 1" = 500'

AZTEC
 CONSULTANTS, INC.
 300 East Alameda Ave.
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1898
 Fax: (303)713-1897
 www.aztecconsultants.com

ILLUSTRATION TO EXHIBIT B
 SW 1/4 SEC. 9, T4N, R67W, 6TH P.M.
 WELD COUNTY, COLORADO
 JOB NUMBER 54818-37 3 OF 4 SHEETS

ILLUSTRATION TO EXHIBIT B

LINE TABLE		
LINE	BEARING	LENGTH
L1	N62°56'25"W	71.96'
L2	N46°04'50"W	124.78'
L3	N61°02'08"W	96.44'
L4	N38°13'50"E	97.60'
L5	N00°00'00"E	84.23'
L6	N34°32'15"W	252.50'
L7	N68°44'13"E	104.57'
L8	S59°40'57"E	166.01'
L9	N90°00'00"E	75.86'
L10	N48°25'30"E	98.93'
L11	N00°51'35"W	178.22'
L12	N29°49'13"W	160.73'
L13	S86°13'22"W	210.38'
L14	N39°39'32"E	314.41'
L15	N30°51'09"W	193.10'
L16	N22°16'35"E	164.82'
L17	N18°23'04"W	163.95'
L18	N38°14'03"E	293.89'
L19	N73°48'58"E	301.18'
L20	N08°16'54"E	101.30'

LINE TABLE		
LINE	BEARING	LENGTH
L21	N17°05'56"W	312.42'
L22	N00°35'30"E	243.05'
L23	S89°24'30"E	177.69'
L24	S04°54'49"E	710.16'
L25	S12°48'08"W	482.40'
L26	S36°08'54"W	108.94'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	17°42'57"	1870.10'	578.23'
C2	23°20'46"	1870.10'	762.00'

NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: _____
 DWG NAME: PARCEL A - PLAT.DWG
 DWG: CWB CHK: SDL
 DATE: 10/18/2019
 SCALE: N/A



200 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1898
 Fax: (303)713-1897
 www.aztecconsultants.com

ILLUSTRATION TO EXHIBIT B
 SW 1/4 SEC. 9, T4N, R67W, 6TH P.M.
 WELD COUNTY, COLORADO
 JOB NUMBER 54818-37 4 OF 4 SHEETS

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER QUARTER CORNER OF SAID SECTION 9, WHENCE THE WEST QUARTER CORNER OF SAID SECTION 9 BEARS NORTH 89°24'30" WEST, A DISTANCE OF 2,711.57 FEET, ALL BEARINGS HEREON ARE REFERENCED TO THIS LINE;

THENCE ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, SOUTH 00°47'32" EAST, A DISTANCE OF 2,624.04 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, NORTH 89°11'03" WEST, A DISTANCE OF 1,595.06 FEET TO THE EASTERLY LINE OF THAT PARCEL OF LAND RECORDED IN BOOK 221 AT PAGE 72 IN THE RECORDS OF THE CLERK AND RECORDER OF SAID WELD COUNTY;

THENCE ALONG SAID EASTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1. NORTH 36°08'54" EAST, A DISTANCE OF 153.97 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1,950.10 FEET;
2. NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°20'46", AN ARC LENGTH OF 794.60 FEET;
3. TANGENT TO SAID CURVE, NORTH 12°48'08" EAST, A DISTANCE OF 482.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1,950.10 FEET;
4. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°42'57", AN ARC LENGTH OF 602.97 FEET;
5. TANGENT TO SAID CURVE, NORTH 04°54'49" WEST, A DISTANCE OF 702.44 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9;

THENCE ALONG SAID NORTH LINE, SOUTH 89°24'30" EAST, A DISTANCE OF 1,052.88 FEET TO THE **POINT OF BEGINNING**;

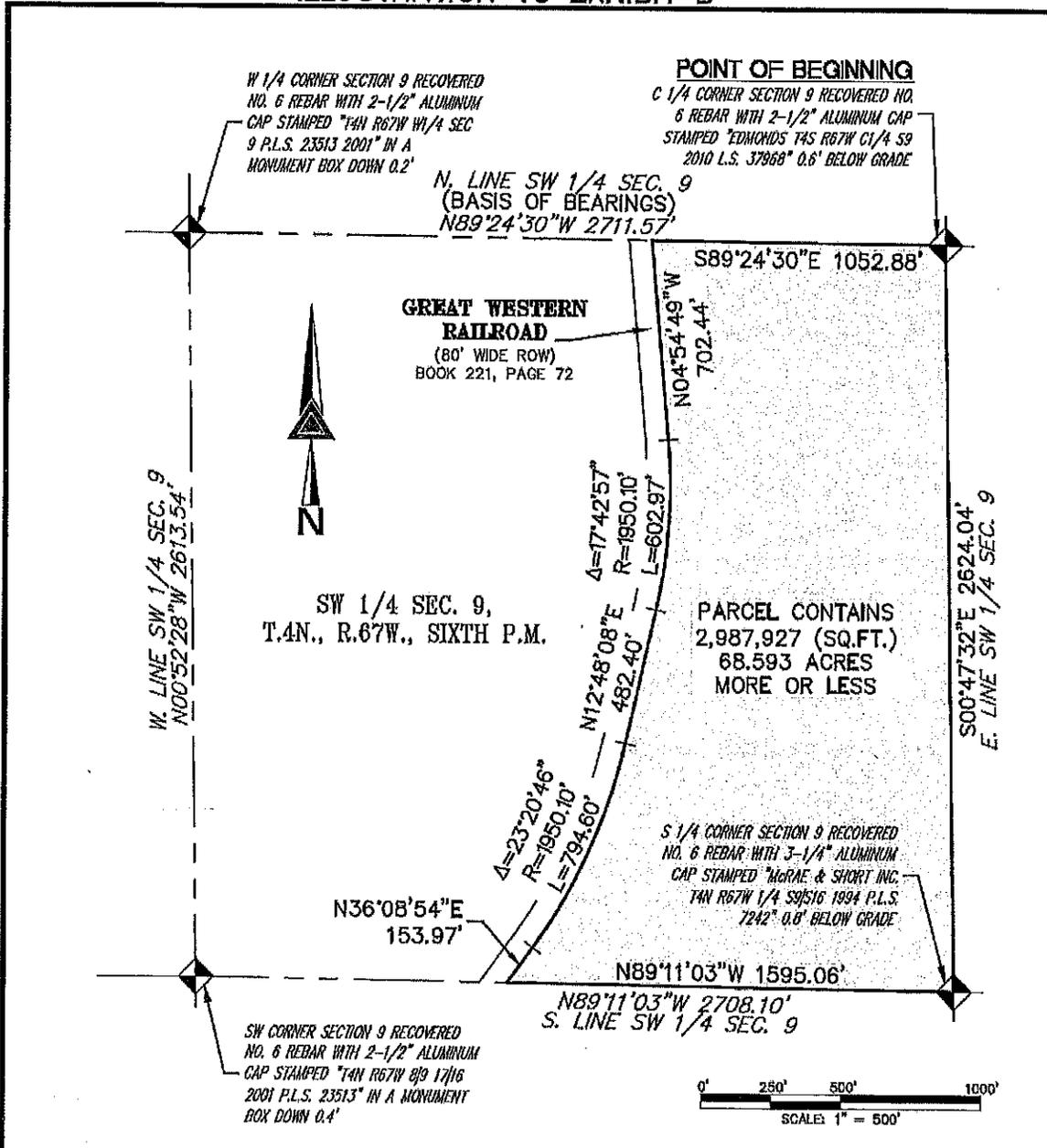
CONTAINING AN AREA OF 68.593 ACRES, (2,987,927 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



SHAUN D. LEE PLS NO. 38158
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT B



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH:
 DWG NAME: PARCEL B.DWG
 DWG: YM CHK: SOL
 DATE: 8/16/2019
 SCALE: 1" = 500'

AZTEC
 CONSULTANTS, INC.
 308 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303) 713-1978
 Fax: (303) 713-1897
 www.aztecconsultants.com

ILLUSTRATION TO EXHIBIT B
 SW 1/4 SEC. 9, T4N, R67W, 6TH P.M.
 WELD COUNTY, COLORADO
 JOB NUMBER 54818-37 2 OF 2 SHEETS

AGENDA ITEM 7

Town Manager Report

TOWN OF JOHNSTOWN

MEMORANDUM

TO: Honorable Mayor and Town Council Members

FROM: Matt LeCerf, Town Manager

DATE: December 2, 2019

CC: Town Staff
Local Media

SUBJECT: Departmental Report

Upcoming Town Council Work Sessions – If there are topics that the Council would like staff to schedule for discussion, please let me know. The following topics are recommended for Council discussion (all meetings will be held in the Town Council Chambers unless otherwise indicated):

- 12/12/2019 – Special Called Meeting – FY 2020 Adoption
- 12/16/2019 – Regular Town Council Meeting
- 12/24/2019 – Offices Closed
- 12/25/2019 – Offices Closed
- 01/01/2020 – Offices Closed
- 01/06/2020 – Regular Town Council Meeting

Administration, Finance, & Planning

- *Liquor License Renewal* – The Club Liquor License for J & M Post Veterans Club located at 104 SE 1st Place was submitted to the State Liquor for renewal.
- *Executive Administrative Assistant* – Danielle Gardner, has accepted the position of Executive Administrative Assistant. Her starting date will be on or about March 23, 2019. We are excited to have her on board after she welcomes a new baby to her family.
- *2534 Sign Enforcement* – Complaints have been received by Planning Staff related to leasing signs, in particular, in the 2534 area on sidewalks, in the right-of-way tree lawn, and off-site. Staff is working to create a simple educational brochure to clarify sign allowances and requirements to distribute as needed, with new license applications, and on an annual basis in the mailed business license renewal reminders. We are hopeful we can accomplish this, still, for the planner 2020 reminders.
- *2020 Proposed Budget* – The 2020 Budget documents including the mill levy certification are being reviewed and finalized for presentation and adoption.
- *Caselle* – Substantial progress has been made on the restructuring of our accounting system. We are hoping to be able to complete mapping of the system by December 16th.

- *Certification of Liens* – Most of the customers with outstanding bills have paid on their accounts. At this time there are only two accounts that are subject to having a lien placed.

Police Department

Training:

- *Assist other agency* – Lieutenant Oglesby and Detective Slocum trained officers from the Severance in scenario-based simulator training at Windsor Police Department.
- *Safety Equipment Donation* – Steel Ops Ltd. Donated a Sentry Armor Kit (ballistic vest). The Sentry kit is a light weight, quick deploy, active shooter kit. These plates are capable of stopping 55gr. 223 FMJ and 62gr Steel Core 5.56 from a 20” barrel from only 10 feet away. The kit was donated to our School Resource Officer.
- *New Police Officer* – We will be swearing in our newest officer, Tyler Rashid, on November 27, 2019 at 10:00 a.m. Tyler comes to us from the Larimer County Sheriff’s Office.

Public Works Department

Streets, Stormwater, & Parks

- *Teamwork* – Don Gardner sent Tim Callender, Bob Bellows and Austin Lanier who assisted with the flushing of our water mains during the discolored water issue in Town. I would like to say thanks again for all their efforts and the water and sewer team who all stepped up during this time
- *Parks* – Heater at Town lake bathroom was replaced. Also, crews cleaned up the pump house on the west side of lake.
- *Streets & Alley* – Asphalt milling have been placed on CR 18 and CR 3 to fill some ruts. Also, millings were placed on the CWWTP road that leads to the effluent discharge point from plant and at two lift stations.
- *Xmas decorations* – Crews continue to install lights and banners around Town for the Holidays. All decorations should be completed by the Thanksgiving holiday in preparation for the Johnstown Jingle Event.
- *Senior Center* – Staff replaced and cleaned all filters and vents at the senior center.
- *Town Hall* – Staff also replaced filters throughout town administration building. The furnace has been problematic during the early winter thus far. We brought in a HVAC company who repaired the PRV and had to remove the circuit board for repairs. This may be an issue we need to evaluate, but hopefully not prior to the 2021 fiscal year.

Water & Wastewater

- *Water plant* – Larry Weber with M & J Electric was called out to check on what was causing the #5 Variable Frequency Drive (VFD) at the distribution pump house from tripping out. Unfortunately, after testing the system, the cause is a bad VFD and we are currently requesting quotes now to replace the unit.
- *Water Discoloration* – The discoloration of the water as we all know caused quite a concern during the previous week and justifiably so. I am happy to report that all tests came back meeting State regulations including a voluntary Bac-T sample that tests for Ecoli and Coliform. Staff is in the process of creating SOP’s for all work that can affect water quality. Water is back to normal with respect to the color. The Staff is committed to do all we can to prevent this from occurring again.

- *CWWTP* – We are getting ready to start the aeration project at the CWWTP. Concrete pads were poured for the project. Aerators were ordered and we hope to have them on site within the next 3-4 weeks. The Weifield Group has started getting all the necessary material ordered and the project should be underway within two weeks.
- *Valve* – Staff repaired the blow off valve for the raw water line from Lone Tree reservoir. This blow off is needed to conduct proper flushing for the raw water line during transfer of sources. Thanks to Maurice Pribble and Tim Callender who helped with repairs.
- *SOP's* – Staff is working on updated Standard Operating Procedures for operations that may impact water quality. After the recent event of discolored water, the importance to review our current policies and ensure they are proactive and prevent a future event is our team's focus.

AGENDA ITEM 10A

Public Hearing

**Thompson River Ranch Filing #10
Final Plat**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: December 2, 2019
ITEM NUMBER: 10A
SUBJECT: Public Hearing- Final Plat for Thompson River Ranch Filing No 10
ACTION PROPOSED: Consider Approval of the Final Plat for Thompson River Ranch Filing No 10
ATTACHMENTS: Proposed Final Plat
PRESENTED BY: Kim Meyer, Planning & Development Director

AGENDA ITEM DESCRIPTION: A 6.87-acre property located north of River Ranch Parkway, encircled on west, north and east by similar single-family lots in Filings 5 & 6, Filing 10 is the next filing in the Thompson River Ranch subdivision, with 40 single family lots proposed. Lot sizes range from 4225 SF to 9567 SF, with a gross density of approximately 5.82 units/acre. An existing roadway – Riverwalk Circle – encircles these 40 lots, providing access to the lots on the far east and west, with two new road segments built to serve the internal lots.

An existing AT&T easement runs north-south through the site, pushing the lots along the west side of “Barkwood Drive” to the west, and decreasing these lots sizes. Outlot A was created to provide additional greenspace to the front of these lots, as well as a circular drive that will serve these driveways.

Background:

Prior Actions: In 1999, the property was annexed and zoned PUD-MU as part of the WRFG Annexation. Thompson River Ranch Filing No. 1, including the parcels under review, was approved in 2005, along with the Thompson River Ranch Design Guidelines, which designated the parcels for commercial and multi-family use. The Thompson River Ranch Design Guidelines were amended in 2017 to reconfigure the school/park site and allow single family detached residential on the parcels.

Design Standards: Existing Thompson River Ranch design standards and guidelines will apply to this filing. Home designs are subject to approval by Town Staff, to ensure compliance with the design guidelines, and a proposed Subdivision Development and Improvement Agreement. Fencing, landscaping, and street lighting will all be installed in conformance with these approved design guidelines.

Access, Traffic and Parking: Access to the lots would be provided by local public roads to River Ranch Parkway. Written into the development agreements of prior filings, as well as the proposed agreement for this filing, is the need to improve High Plains Boulevard /LCR 3 to the Town arterial standard – with an Interim Arterial approved from the ditch crossing south to LCR 18, with the trigger for the improvement being the release of building permit #120 on the east side of the development. This design work is being addressed by the developer and Town Staff will review and approve those plans prior to construction.

Water and Sanitary Sewer: Construction plans were approved by the Town in May 2018, with the developer pursuing construction at their own risk, given the lack of an approval final plat and development plan. This area of Thompson River Ranch connects to existing water and sanitary mains constructed based on plans approved for Filing No 5. Capacities and pressures are adequate to serve these additional lots. Wastewater would run to the Low Point Wastewater Treatment Plant. A Water and Sewer Service Agreement is proposed, and appears on this same Council agenda.

Storm Drainage: Stormwater runoff from the development would be managed in conformance with Town requirements and the overall Master Drainage Plan for Thompson River Ranch.

Grading & Topography: This site is currently graded for development, given the prior approvals of construction drawings.

Floodplain: The proposed lots are outside of the updated FEMA model for the 100-year floodplain.

Parks and Open Space: The public land dedication requirement for this subdivision is approximately four (4) acres net. No parks or open space is being dedicated with this subdivision. A small private green space will be development along Barkwood Drive along the shared drive access.

Emergency Services: Loveland Fire & Rescue Authority (LFRA) has approved the plans and construction drawings. Addressing of lots will be coordinated with LFRA.

Schools: The property lies within the Thompson School District and the overall development is meeting requirements for either cash-in-lieu or land dedication for a new school. A new PK-8 school is proposed for the site immediately south of this Filing 10.

Postal Service: USPS-approved, clustered postal boxes will be installed in the development. Addressing will be coordinated with the USPS.

Mineral Interests: Under state law, the developer has previously notified all severed mineral interest owners of pending surface development.

Technical Analysis: This is a simple proposed subdivision, and is a logical extension of the Thompson River Ranch neighborhood. The application generally complies with Town requirements and the requirements of the annexation agreement, and the preliminary plat and development plan. The proposed single-family residential land use is consistent with the Johnstown Area Comprehensive Plan and Thompson River Ranch Design Guidelines.

Planning & Zoning Commission: On January 24, 2018, the Planning and Zoning Commission (PZC) held a public hearing to consider this Final Plat. No substantive modifications to the plat have occurred since that time.

After deliberations, the Planning and Zoning Commission reviewed and recommended to the Town Council approval of the Thompson River Ranch Filing No. 10 Final Plat with the following staff conditions:

1. Landscaping, signage, street lighting and related private improvements are subject to the Thompson River Ranch Design Guidelines, and the Final PUD Site Development Plan as approved by the Town.
Staff comment: Staff is continuing to review the Final Development Plan for this filing. Per design guidelines, this is an administrative approval.
2. On or before Developer obtains the 120th building permit in the Thompson River Ranch Development, exclusive of Filing Nos. 1, 3 and 4, and exclusive of future development of the mixed-use parcels located near the Interstate 25 Frontage Road, Developer shall have completed construction to improve Larimer County Road 3 (High Plains Boulevard) to an Interim Arterial standard, as described in the Town Design Criteria, within Town Limits from River Ranch Parkway to the Hillsborough Ditch crossing. The road shall be extended as a special Interim Arterial section across the Hillsborough Ditch south to Larimer County Road 18, with access improvements onto County Road 18 as determined by the Town Traffic Engineer.
Staff comment: This Special Condition appeared in prior Development Agreements for Filings 5 and 6 with Clayton Group / Oakwood Homes was amended in 2018 to read (excerpt – emphasis added to highlight differences):
“2. On or before Developer obtains the 120th building permit... exclusive of Filings No. 1, 3, and 4, and exclusive of future development of the mixed-use parcels located near the Interstate 25 frontage road, Developer shall have completed construction to improve Larimer County Road 3...”
3. On or before June 30, 2018, or as required by Town Council, Developer shall complete construction of the community building and swimming pool described in the Final Development Plan ‘A’ and ‘B’ for Thompson River Ranch Filing No. 1.
Staff comment: This Special Condition that appeared in prior Development Agreements for Filings 5 and 6 with Clayton Group / Oakwood Homes was amended in 2018 to read (excerpt – emphasis added):
“1. Developer shall complete construction of the community building and swimming pool... on or before the issuance of 500 additional certificates of occupancy by the Town, excluding... Filings 1, 3, and 4, or by June 30, 2023, whichever is earlier.”

The construction of the “clubhouse and park” located south of River Ranch Parkway received approval of construction drawings on March 2019. No building permits have been issued for these structures, to the best of Staff’s knowledge.

4. A Water and Sewer Service Agreement, and a Development Agreement prepared by the Town and signed by the developer shall be submitted for Town Council consideration with the Final Plat.

Staff comment: Satisfied. A proposed Water and Sewer Service Agreement and Development Agreement accompany this plat consideration on this Council agenda.

Given subsequent modifications to associated development agreements, and inclusion of substantively similar language in the proposed Subdivision Development and Improvement Agreement for Filing No 10, Staff believes these conditions can be modified and simplified. The development agreement proposed for initial consideration of Council on this agenda includes provisions related to development trigger (120th permit) for and ultimate improvement of High Plains Blvd/LCR3 to LCR 18; as well as for the community building and swimming pool (500th C. of O.), as shown in the FDP for Filing No 1. Proposed updated condition language appears in "Suggested Motions" below.

Community Notification: Mailed notices were sent directly to all property owners of record, per Larimer Co Assessor, within 500' of the parcel boundaries, a sign was posted on-site, and a notice of this hearing published in the *Johnstown Breeze*. As of the date of publication of this communication, no comments or concerns have been received by Staff.

LEGAL ADVICE: If approved, the Town Attorney will prepare a resolution for review at a subsequent meeting.

FINANCIAL ADVICE: N/A

RECOMMENDED ACTION: The Planning and Zoning Commission has recommended approval of the Final Plat with conditions.

SUGGESTED MOTIONS:

For Approval with Conditions: I move to approve the Thompson River Ranch Filing No 10 Final Plat with the following conditions:

1. Landscaping, signage, street lighting and related improvements are subject to the approved construction drawings, Thompson River Ranch Design Guidelines, and the PUD Final Development Plan as may be approved by the Planning & Development Director.
2. A Water and Sewer Service Agreement, and a Development Agreement be approved by Town Council, executed by both parties, and recorded concurrently with the Final Plat.

For Denial: I move to deny approval of the Thompson River Ranch Filing No 10 Final Plat for the following reason(s):

Reviewed:

Town Manager

**SUMMARY MINUTES
PLANNING & ZONING COMMISSION
WEDNESDAY, JANUARY 24, 2018
COUNCIL CHAMBERS
450 S. PARISH AVE.**

- 1. CALL TO ORDER:** *Chair Dowling called the meeting to order at 7:00 pm.*
- 2. ROLL CALL:** *Present were Commissioners Eady, Montez, Dowling, Kingsolver, Geisendorfer and Storms. Absent was Commissioner Tepper.*
- 3. PUBLIC COMMENTS REGARDING ITEMS NOT ON THE AGENDA:** *None*
- 4. PUBLIC HEARINGS:**

A. Final Plat - Thompson River Ranch Filing No. 10: *Chair Dowling opened the hearing at 7:05 pm. Town Planner Franklin introduced the item and presented the staff recommendation. Josh Rowland of LAI, representing Oakwood Homes presented the request and answered questions.*

Public Comment: No one spoke.

Chair Dowling closed the public hearing at 7:08 pm and asked for discussion and a motion. Motion by Commissioner Montez, Seconded by Commissioner Kingsolver to recommend approval of the Final Plat for Thompson River Ranch Filing No. 10 with the following conditions:

1. *Landscaping, signage, street lighting and related private improvements are subject to the Thompson River Ranch Design Guidelines, and the Final PUD Site Development Plan as approved by the Town.*

2. *On or before Developer obtains the 120th building permit in the Thompson River Ranch Development, exclusive of Filing Nos 1, 3 and 4, and exclusive of future development of the mixed-use parcels located near the Interstate 25 Frontage Road, Developer shall have completed construction to improve Larimer County Road 3 (High Plains Boulevard) to an Interim Arterial standard, as described in the Town Design Criteria, within Town Limits from River Ranch Parkway to the Hillsborough Ditch crossing. The road shall be extended as a special Interim Arterial section across the Hillsborough Ditch south to Larimer County Road 18, with access improvements onto County Road 18 as determined by the Town Traffic Engineer.*

3. *On or before June 30, 2018, or as required by Town Council, Developer shall complete construction of the community building and swimming pool described in the Final Development Plan 'A' and 'B' for Thompson River Ranch Filing No. 1.*

A Water and Sewer Service Agreement, and a Development Agreement prepared by the Town and signed by the developer shall be submitted for Town Council consideration with the Final Plat.

Unanimous.

B. Minor Amendment to Grace Church Final Development Plan (Classroom

Addition): *Chair Dowling opened the hearing at 7:10 pm. Town Planner Franklin introduced the item and presented the staff recommendation. Pastor Bob Weber presented the request and answered questions.*

Commissioner questions:

- *Had CDOT approved access? Only required for a school.*
- *Is there a back entrance? (Yes, a gated access from Alabaster)*

Public Comment: No one spoke

Chair Dowling closed the public hearing at 7:20 pm and asked for discussion and a motion.

Motion by Commissioner Storms, Seconded by Commissioner Kingsolver to approve the amendment to the Final PUD Development Plan for Grace Church addition with the condition that staff confirm with CDOT the need for an amended access permit.

Unanimous.

5. NEW BUSINESS:

A. Approval of Minutes of December 13, 2017: *Motion to approve by Commissioner Montez, seconded by Commissioner Kingsolver. Unanimous.*

B. County Referrals: None (Larimer County Stroh Pit Hearing is February 26, 2018)

6. STAFF REPORT: *Town Planner franklin presented information on the following items:*

A. Recent Town Council Meeting Agendas

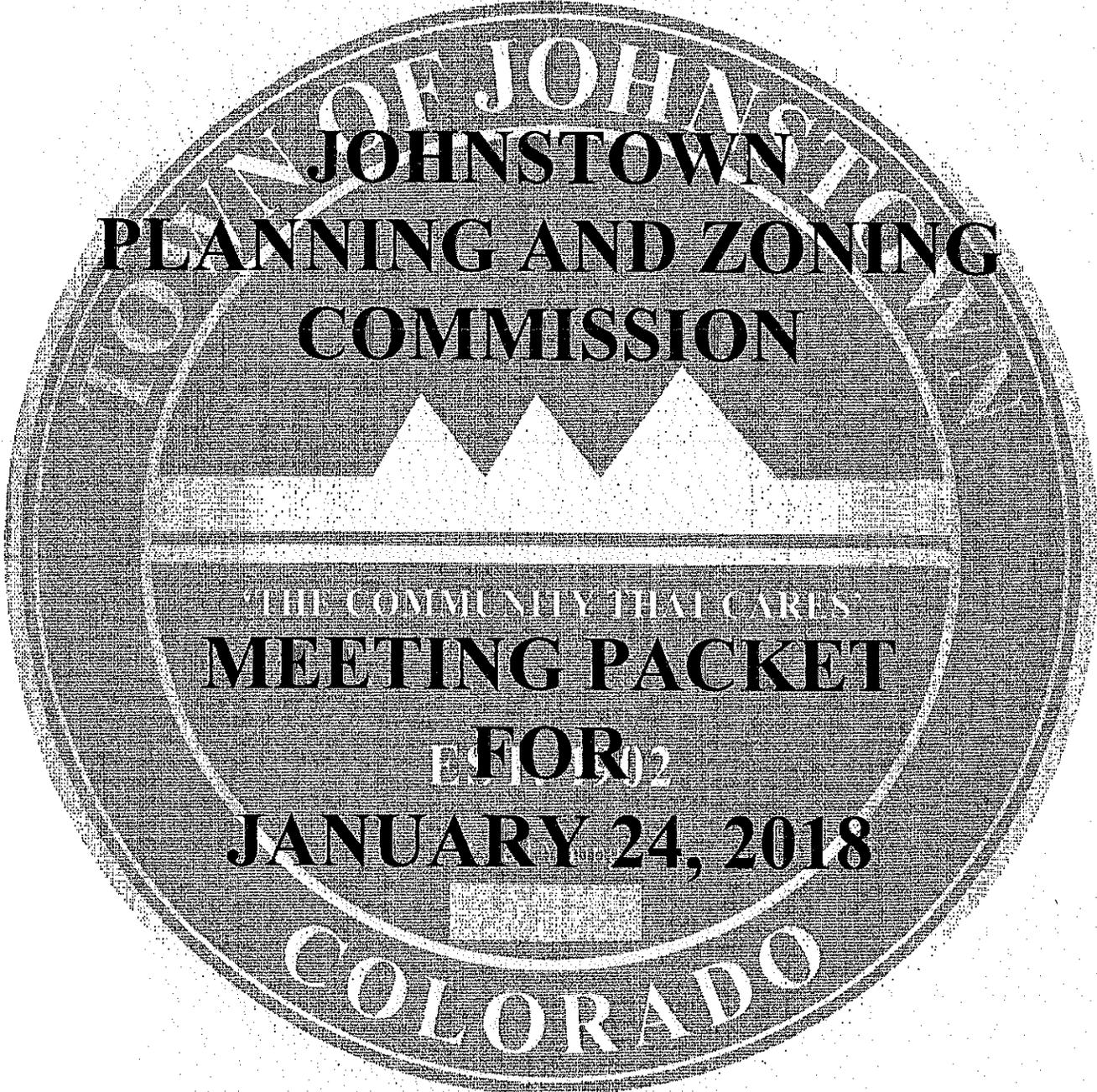
B. Applications in Review Report

C. Other Project and Program Updates: *Discussion of packet format and delivery, other items for 2018.*

7. COMMISSIONER REPORTS AND COMMENTS: *None.*

8. ADJOURN: Chair Dowling adjourned the meeting at 7:40 pm

Respectfully submitted by John Franklin, Town Planner as Secretary to the Planning and Zoning Commission.

The seal of the Town of Johnstown, Colorado, is a circular emblem. It features a central landscape with three stylized mountains and a horizontal line representing a river or road. The text "TOWN OF JOHNSTOWN" is arched across the top, and "COLORADO" is arched across the bottom. The seal is rendered in a halftone or stippled style.

TOWN OF JOHNSTOWN
PLANNING AND ZONING
COMMISSION

THE COMMUNITY THAT CARES
MEETING PACKET

FOR
JANUARY 24, 2018

COLORADO

Town of 
Johnstown

**PLANNING & ZONING COMMISSION
WEDNESDAY, JANUARY 24, 2018
COUNCIL CHAMBERS
450 S. PARISH AVE.
7:00 P.M.**

AGENDA

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENTS REGARDING ITEMS NOT ON THE AGENDA**
- 4. PUBLIC HEARINGS:**
 - A. Final Plat - Thompson River Ranch Filing No. 10.**
 - B. Minor Amendment to Grace Church Final Development Plan (Classroom Addition)**
- 5. NEW BUSINESS:**
 - A. Approval of Minutes of December 13, 2017**
 - B. County Referrals: None (Larimer County Stroh Pit Hearing is February 26, 2018)**
- 6. STAFF REPORT:**
 - A. Recent Town Council Meeting Agendas (Attachment)**
 - B. Applications in Review Report (Attachment)**
 - C. Other Project and Program Updates: Discuss packet format and delivery, other items for 2018.**
- 7. COMMISSIONER REPORTS AND COMMENTS:**
- 8. ADJOURN:**

AGENDA ITEM 4A

PUBLIC HEARING:

**Final Plat
Thompson River Ranch Filing No. 10**

AGENDA MEMORANDUM

TO: Johnstown Planning and Zoning Commission
FROM: John Franklin, AICP, Town Planner
DATE: For November 8, 2017
SUBJECT: Public Hearing Regarding a Final Plat for Thompson River Ranch Filing No. 10

Property Information

Applicant: Oakwood Homes

Owner: Same

Location: Three-fourths mile east of I-25 and one-half mile north of Hwy 402.

Property Size: 6.87±acres

Comprehensive Plan Designation: Residential

Current Zoning: PUD-MU

Current Use(s) of Property: Vacant

Surrounding Land Uses/Zoning:

- North: Thompson River Ranch Residential/PUD-MU
- South: Thompson River Ranch Residential/PUD-MU
- East: Thompson River Ranch Residential/PUD-MU
- West: Thompson River Ranch Residential/PUD-MU
-

Summary of Application: Oakwood Homes has requested Town approval of a final subdivision plat (replat) for 40 single family detached lots.

Prior Actions: In 1999, the property was annexed and zoned PUD-MU as part of the WRFG Annexation. Filing No. 1, including the several parcels under review, was approved in 2005, along with the Thompson River Ranch Design Guidelines, which designated the parcels for commercial and multi-family use. The Thompson River Ranch Design Guidelines were amended in 2017 to reconfigure the school/park site and allow single family detached residential on the parcel.

Technical Analysis

Relationship to Town Vision and Strategic Plan:

The Thompson River Ranch development is envisioned by the Town Council as a major residential neighborhood with park and open space amenities.

Public Health and Safety Impacts: None.

Access and Traffic: Access will be by way of River Ranch Parkway from the I-25 Frontage Road. Overall access from CR 3 (High Plains Blvd.) to the east is required to be improved prior to the 120th permit in the areas east of Filing No. 1, including this filing.

Town Utilities: The property is within the Town's service area. Public water mains are available to serve the subdivision. Sanitary sewer is treated at the Low Point Wastewater Treatment Plant. Stormwater is collected, detained in a private, regional detention facility and then directed towards the Big Thompson River.

Mineral Interests and Operations: There are no oil/gas wells or production facilities approved for this site.

Parks and Open Space: Adjoining private landscaped common park areas are provided or planned in Thompson River Ranch. 2. Developer shall complete construction of the community building and swimming pool described in the Final Development Plan 'A' and 'B' for Thompson River Ranch Filing No. 1 approved June 5, 2006, on or before June 30, 2018.

Landscaping: Landscaping shall comply with Johnstown Landscape Standards and Specifications, and Thompson River Ranch Design Guidelines.

Fencing and Screening: As established by the TRR Design Guidelines and subject to Final Development Plan.

Lighting and Street Furniture: As established by the TRR design Guidelines and subject to Final Development Plan.

Signage: Signage is per the TRR Design Guidelines and shall conform the Town Sign Code.

Phasing: The property is being developed in one or more phases.

Attachments: Written request narrative, Final Plat.

Crucial Referral Responses: None.

Staff Recommendation:

Recommend approval of the Final Plat, subject to the following conditions:

1. Landscaping, signage, street lighting and related private improvements are subject to the Thompson River Ranch Design Guidelines, and the Final PUD Site Development Plan as approved by the Town.
2. On or before Developer obtains the 120th building permit in the Thompson River Ranch Development, exclusive of Filing Nos 1, 3 and 4, and exclusive of future development of the mixed-use parcels located near the Interstate 25 Frontage Road, Developer shall have completed construction to improve Larimer County Road 3 (High Plains Boulevard) to an Interim Arterial standard, as described in the Town Design Criteria, within Town Limits from

River Ranch Parkway to the Hillsborough Ditch crossing. The road shall be extended as a special Interim Arterial section across the Hillsborough Ditch south to Larimer County Road 18, with access improvements onto County Road 18 as determined by the Town Traffic Engineer.

3. On or before June 30, 2018, or as required by Town Council, Developer shall complete construction of the community building and swimming pool described in the Final Development Plan 'A' and 'B' for Thompson River Ranch Filing No. 1.
4. A Water and Sewer Service Agreement, and a Development Agreement prepared by the Town and signed by the developer shall be submitted for Town Council consideration with the Final Plat.

Planning Commission Action

1. Recommendation:

“I move that the Commission recommend approval of the Final Plat for Thompson River Ranch Filing No. 10.”

Or,

2. Recommendation with Conditions:

“I move that the Commission recommend approval of the Final Plat for Thompson River Ranch Filing No. 10 with the following condition(s):

- a) _____;
- b) Etc.”

Or,

3. Recommend denial:

“I move that the Commission recommend table the matter and direct the Town Planner to prepare findings for denial of the Final Plat for Thompson River Ranch Filing No. 10 regarding the following: .

- a) _____;
- b) _____;
- c) Etc.”

Thompson River Ranch

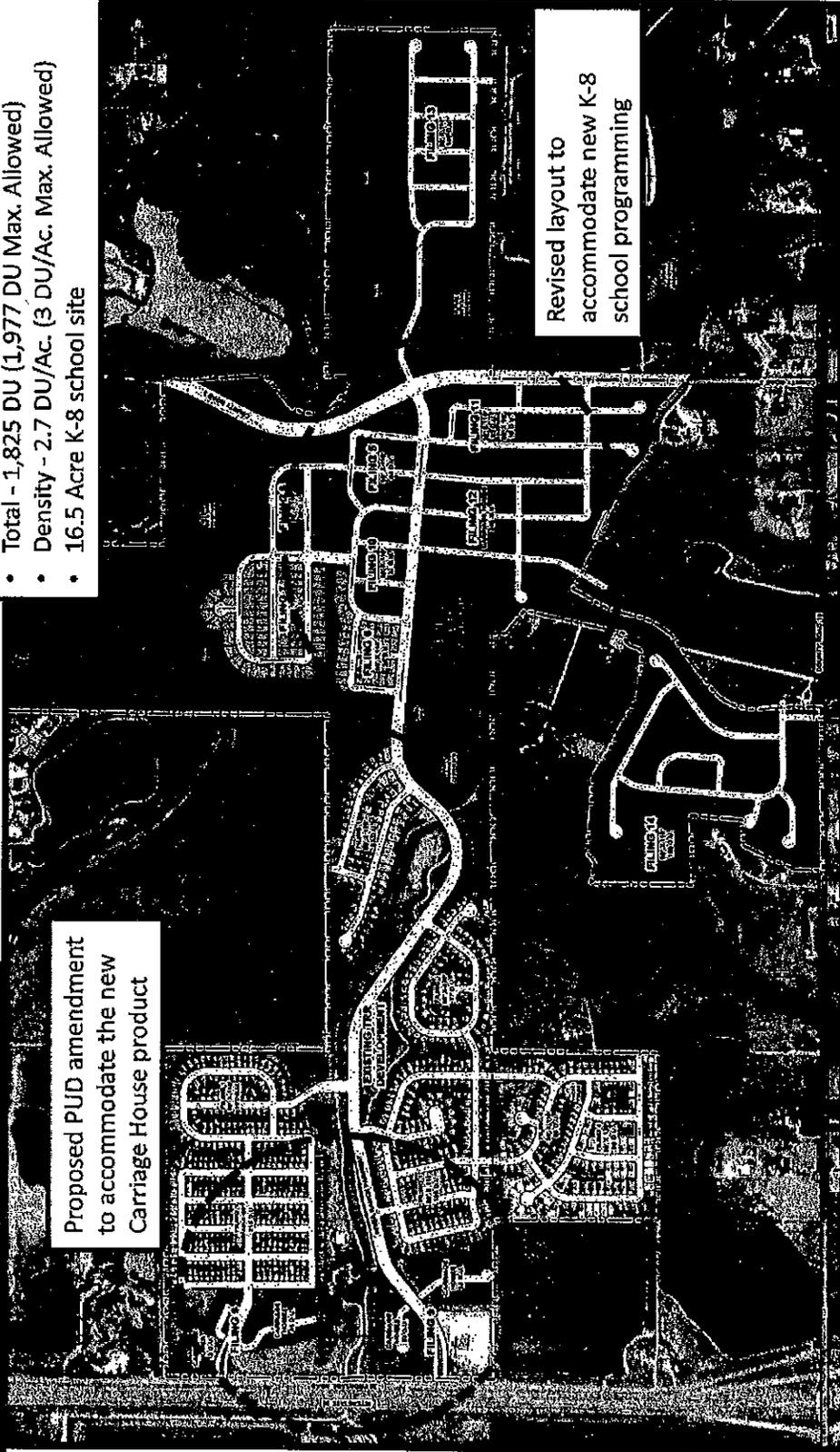
Proposed Amendments to PDP

Development Summary –

- Existing - 215 patio / 546 conv. SFD
- Proposed – 367 Carriage Homes / 677 conv. SFD
- Total - 1,825 DU (1,977 DU Max. Allowed)
- Density - 2.7 DU/Ac. (3 DU/Ac. Max. Allowed)
- 16.5 Acre K-8 school site

Proposed PUD amendment
to accommodate the new
Carriage House product

Revised layout to
accommodate new K-8
school programming



APPLICATION

Town of

Johnstown

450 S. Parish Ave. Johnstown, CO 80534
Ph: 970-587-4684 Fax: 970-587-0141

COMMUNITY DEVELOPMENT APPLICATION

Date: 10/27/2017

Project Name: Thompson River Ranch Filing 10

Application is for: Annexation Zoning Subdivision USR Cond. Use Other Final Development Plan

Landowner: Clayton Properties Group II, a Colorado Corporation DBA Oakwood Homes

Address: 1908 Tower Road, Denver, Colorado 80249

Telephone: 303-486-8632 office 720-335-8854 cell

Authorized Representative: LAI Design Group - Dawn Becker

Address: 88 Inverness Circle East, Building J, Suite 101

Englewood, CO 80112

Telephone: 303-734-1777 ; Fax Number: _____ ; E-Mail: dbecker@laidesigngroup.com

Landowner Authorization:

The undersigned affirms ownership of the property pertaining to this application, and hereby applies to the Town of Johnstown, Colorado for the above indicated development review process, and authorizes the individual or company stated as "authorized representative" to represent me/us in all aspects of said process.

[Signature]
Signature of Landowner

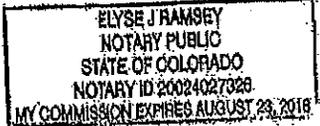
Signature of Landowner

STATE OF COLORADO)
)ss
COUNTY OF DENVER)

The foregoing application was subscribed and sworn to before me this 24th day of OCTOBER, A.D., 2017, by Jason J.W. Pook as Director of Land Acquisition & Development.

Witness my hand and official seal.

My commission expires: Aug 23, 2019



Elyse J Ramsey
Notary Public

FINAL PLAT

REFERRAL COMMENTS

Town of

Johnstown

Planning and Zoning Department
450 S. Parish Ave. Johnstown, CO 80534
(970) 587-4664; Fax (970) 587-0141
www.townofjohnstown.com

DATE: *November 27, 2017*

REFERRAL OF APPLICATION

The Town of Johnstown has received the following application for review:

Project: *Thompson River Ranch Filing No. 10 – Final Plat/Plan*

Location: *North of River Ranch Parkway and approximately three-fourths of a mile east of I-25 Frontage Road*

Applicant: *Oakwood Homes*

Please reply by: *December 27, 2017*

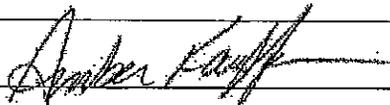
Tentative Planning and Zoning Commission Hearing: *January 24, 2018*

Planner: John Franklin ifranklin@townofjohnstown.com

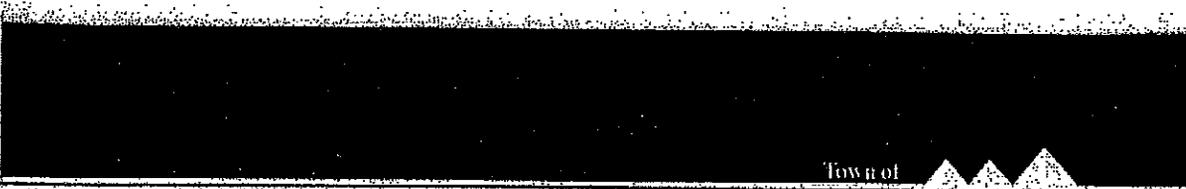
This application is submitted to you for review. Any comments or recommendations you consider relevant to this request would be appreciated. Please reply by the above listed date so that we may include your comments with others. If additional documentation is required, please advise us as soon as possible.

- We have reviewed the request and find no conflicts with our interests.
- Please see the attached letter.
- Comments:

LTWD has no facilities in the area.

Signature:  Date: Nov. 29, 2017

Agency: Little Thompson Water District



Town of
Johnstown

Planning and Zoning Department
450 S. Parish Ave. Johnstown, CO 80534
(970) 587-4664; Fax (970) 587-0141
www.townofjohnstown.com

DATE: *November 27, 2017*

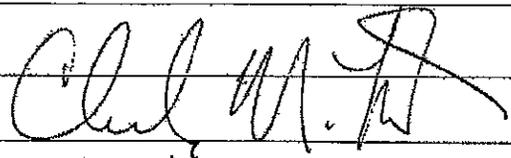
REFERRAL OF APPLICATION

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Location: *North of River Ranch Parkway and approximately three-fourths of a mile east of I-25 Frontage Road*
Applicant: *Oakwood Homes*
Please reply by: *December 27, 2017*
Tentative Planning and Zoning Commission Hearing: *January 24, 2018*
Planner: John Franklin jfranklin@townofjohnstown.com

This application is submitted to you for review. Any comments or recommendations you consider relevant to this request would be appreciated. Please reply by the above listed date so that we may include your comments with others. If additional documentation is required, please advise us as soon as possible.

We have reviewed the request and find no conflicts with our interests.
 Please see the attached letter.
Comments:

Signature:  Date: 11/29/17
Agency: FHU



**FELSBURG
HOLT &
ULLEVIG**

connecting and enhancing communities

November 29, 2017

MEMORANDUM

TO: John Franklin
FROM: Charles M. Buck, P.E., PTOE
SUBJECT: Traffic Engineering Review
PROJECT: Thompson River Ranch - Filing No. 10
FHU # 99-201

I have reviewed the submittal materials for Thompson River Ranch -- Filing No. 10. My review has focused on the traffic engineering and transportation planning aspects but not general civil or utility engineering. I have the following comments:

- Filing No. 10 consists of 40 single family dwelling units. These homes will generate approximately 400 vehicle trips per day. The submittal materials did not include a traffic impact study or addendum. The traffic study that we have on file for Thompson River Ranches, by Matthew J. Delich, P.E., is dated November 4, 2004. As this study is now more than 13 years old, and as the site plan for Thompson River Ranches (including Filing No. 10) has changed, an update analysis would be appropriate.
- The impact of Filing No. 10, in conjunction with Filing Nos. 5, 6, 7, and 8, may trigger the need for improvements to County Road (CR) 3. The construction plans included in this submittal do not depict any improvements to CR 3. CR 3 is currently narrow and unpaved, with a narrow bridge over the Little Thompson River (to the north) and a narrow culvert over the Hillsborough Ditch (to the south).
- The 2004 Traffic Impact Study did not contemplate how phasing of this development might impact CR 3. If an emergency-only access to CR 3 is envisioned, then all site traffic would be directed to/from the I-25 Frontage Road via River Ranch Parkway. The impacts of this configuration at the frontage road may not be adequately addressed in the 2004 study.
- The submitted construction plans seem to indicate that River Ranch Parkway east and west of Filing 10 and Riverwalk Circle have been constructed with preceding phases of development, per the existing conditions depicted on Sheet C1.0. Only River Ranch Parkway adjacent to Filing 10, Hazelwood Lane, and Barkwood Drive are to be constructed with Filing No. 10.
- Sheet C6.5 (Signage and Striping Plan) shows appropriate STOP sign, street sign, and speed limit sign locations.

September 1, 2015
Mr. Randy Byers, AIA, LEED AP
Page 2

- Sheet L0.3 of the submitted Final Development Plan depicts pedestrian circulation. Note that the scale of 1 inch = 1,000 feet is incorrect.

The above constitute my comments on this submittal. Please call if you have any questions or need additional information

AGENDA ITEM 10B

**Consideration for the Subdivision
Development & Improvement Agreement
and the
Water and Sewer Service Agreement
Thompson River Ranch Filing #10**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: December 2, 2019

ITEM NUMBER: 10B

SUBJECT: Initial Consideration for the Subdivision Development and Improvement Agreement (DA) and the Water and Sewer Service Agreement for Thompson River Ranch Filing No 10

ACTION PROPOSED: None

ATTACHMENTS: Subdivision Development and Improvement Agreement & Water and Sewer Service Agreement

PRESENTED BY: Kim Meyer, Planning & Development Director

AGENDA ITEM DESCRIPTION:

Enclosed for review and consideration are agreements proposed for separate action at the next Council meeting. These agreements are interrelated, along with the plat, development plans, and final approved construction plans.

The proposed Subdivision Development and Improvement Agreement (DA) outlines the obligations of the developer with respect to planned public and private improvements required with development of Filing No 10. Special considerations related to this development are defined in Section B-3, which has been reviewed by Staff, including:

- Completion of the community building and swimming pool, described and depicted in the Final Development Plan A & B for Thompson River Ranch, Filing No. 1, approved June 5, 2006, on or before the issuance of 500 certificates of occupancy by the Town, beyond those issued for Thompson River Ranch Filings 1, 3, and 4 ,or by June 20, 2023, whichever is earlier; and
- Completion of High Plains Boulevard / LCR 3 improvements within Town Limits to the Hillsborough Ditch crossing, to an Interim Arterial standard, as well as intersection/access improvements to LCR 18, on or before the 120th building permit is issued, exclusive of Filing 1, 3, 4, and 9.

The Water Sewer Service Agreement (WSSA) presented has been reviewed through legal, engineering, and administration for compliance. For residential in-building and irrigation use, estimated demand is 21.83 AF, resulting in:

Existing Oakwood Credit:	120.82 acre-feet
<u>LESS Est. Demand:</u>	<u>21.83 acre-feet</u>
NET Surplus Credit:	98.99 acre-feet

For Common Area Landscape Irrigation:

Total Available acreage:	96.00 ac
LESS Prior irrigated acreage:	51.58 ac
<u>LESS Current Demand:</u>	<u>0.60 ac</u>
Available acreage credits:	43.82 ac

LEGAL ADVICE: The agreements were drafted and approved by the Town Attorney.

FINANCIAL ADVICE: N/A

RECOMMENDED ACTION: No formal approval at this time. Consideration for approval will be scheduled at the next regular Town Council meeting.

Reviewed and Approved for Presentation:

Town Manager

ATTACHMENT 1

Subdivision Development & Improvement Agreement

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
TOWN OF JOHNSTOWN
(Thompson River Ranch Filing No. 10)**

This Subdivision Development and Improvement Agreement (“Agreement”), made and entered into by and between the **Town of Johnstown, Colorado**, a municipal corporation (the “Town”), and **Clayton Properties Group II, Inc.**, a Colorado corporation, d/b/a Oakwood Homes (the “Developer”).

WITNESSETH:

WHEREAS, Developer is the fee simple 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, Developer seeks to develop the Property and to designate such development as Thompson River Ranch Filing No. 10 (“Development”); and

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

WHEREAS, the Town Council approved the Final Plat by passage of Resolution No. 2019-____, 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 Property, that Developer is responsible for the costs and expenses of those subdivision improvements unless otherwise provided herein, and that the subdivision improvements contemplated herein are reasonable, necessary, appropriate, and directly benefit the Development; and

WHEREAS, Developer agrees to undertake and complete the Development in accordance with this Agreement, the Final Plat, the Resolution, the Town’s ordinances, resolutions and regulations and all other applicable laws and regulations.

NOW, THEREFORE, in consideration of the premises cited above and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the Town and Developer agree as follows:

RECITALS

The Recitals are incorporated as if fully set forth herein.

DEFINITIONS

For the purposes of this Agreement, the following words and terms shall be defined as follows:

1.1 **“Approved Plans”** shall mean: (1) with respect to the Public Improvements, the approved **“Civil Engineering Construction Plans”** related to the Development and on file with Town; and (2) with respect to the Private Improvements, the approved **“the Site Development Plan”** related to the Development and on file with Town.

1.2 **“Developer”** shall mean the owner(s) of the Property described in **Exhibit A** and any heirs, successors, assigns or transferees of any of the Property described in **Exhibit A**.

1.3 **“Civil Engineering Construction Plans”** shall mean the approved engineering plans for construction, installation and improvement of the Public Improvements.

1.4 **“Development”** shall mean all the Property, property rights and subdivision improvements within the legal description in **Exhibit A**.

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

1.6 **“Maintenance Guarantee”** shall mean a guarantee that the Subdivision Improvements constructed shall be free from defects and failures as more fully described in Paragraphs 5.2 and 5.4 below.

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

1.8 **“Public Improvements”** shall mean, without limitation, the construction, installation, improvement and dedication of public improvements, including, but not limited to

public thoroughfares and streets, sanitary sewer facilities, water line facilities, drainage facilities, irrigation structures and other public facilities and improvements to serve the Development.

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

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

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

1.12 “**Town Engineer**” shall mean the professional engineer designated by the Town Manager to perform the obligations set forth in this Agreement.

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

1.14 “**Town Official**” shall include the Town Manager, Town Attorney, Town Treasurer, Town Engineer, Town Planner and their authorized designees.

SUBDIVISION IMPROVEMENTS

2. Public Improvements

2.1 *Pre- Construction*

a. **Engineering Services:** Developer shall furnish, at its own expense, all engineering services in connection with construction, installation and improvement of the Public Improvements. Engineering services shall be performed by a professional engineer registered in the State of Colorado. Engineering services shall consist of, but not be limited to, survey, designs, plans and profiles, specifications, drawings, estimates, construction administration, and the furnishing of necessary documents in connection therewith, including but not limited to final engineering drawings, final sewer and water design plans and final drainage plans (the “Civil Engineering Construction Plans”).

b. **Civil Engineering Construction Plans:** Prior to commencing construction of the Public Improvements, Developer shall submit the Civil Engineering Construction Plans to the Town Engineer for review. Construction of the Public Improvements shall not commence until the Town provides written notice of approval of the Civil Engineering Construction Plans. Developer shall not thereafter modify the approved Civil Engineering Construction Plans without the written approval of the Town. The Town’s review and approval of the Civil Engineering Construction Plans shall not limit or affect Developer’s responsibility or liability for design, construction and installation of the Public Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to

such design, construction and installation, other than negligent designs which are required by the Town over Developer's written objection.

c. **Rights-of-Way, Easements, Permits and Use Tax:** Prior to commencing construction of the Public Improvements, Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances, 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. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Public Improvements. Developer shall also pay all applicable use tax due and owing to the Town.

2.2 ***Construction of Public Improvements:*** Upon satisfaction of the conditions set forth in Paragraph 2.1, Developer shall construct the Public Improvements at its own expense in accordance with this Agreement, the Final Plat, the Resolution, the Civil Engineering Construction Plans, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. All Public Improvements shall be installed and constructed within the rights-of-way or easements dedicated to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Public Improvements shall be new and both workmanship and materials shall be of good quality.

2.3 ***Construction Schedule:*** Developer shall construct the Public Improvements in accordance with the schedule of public improvements set forth on **Exhibit C**, attached hereto and incorporated herein by reference ("Schedule of Public Improvements"). Once construction begins, Developer shall keep the Town Manager informed by monthly status reports of the progress of the work and a projection of when the Public Improvements will be completed as well as the cost of such Public Improvements.

2.4 ***Testing and Inspection:*** Developer shall employ, at its own expense, a qualified independent testing company, approved by the Town Engineer, to perform all testing of materials or construction that may be reasonably required by the Town. Developer shall furnish certified copies of test results to the Town Engineer. At all times during construction of the Public Improvements, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer's cost. All materials and work must conform to the Civil Engineering Construction Plans. Any material or work not conforming to the Civil Engineering Construction Plans shall be promptly removed, repaired or replaced, at Developer's expense and to the satisfaction of the Town Engineer.

2.5 ***Completion of Construction:*** Developer shall complete construction of the Public Improvements 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:** If Developer seeks, and the Town authorizes the issuance of, building permits prior to the completion of certain of the Public Improvements, Developer shall furnish to the Town a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary ("Performance Guarantee") in an amount equal to 110% of the cost of such uncompleted improvements, which cost shall be certified by Developer's professional engineer, licensed in the State of Colorado and approved by the Town Engineer, to secure the installation, improvement and completion of the improvements. The Performance Guarantee shall be released after Initial Acceptance of such improvements.

3. **Private Improvements**

3.1 **Pre-Construction:** Prior to commencing construction of the Private Improvements, Developer shall submit a Site Development Plan to the Town. The Site Development Plan shall contain the proposed Private Improvements for the Development, including a plan for stormwater improvements, an irrigation system, landscaping, fencing, entry-way signage, street signs and posts, street lighting, parks and open space, trails, postal service boxes and school bus stop shelters. 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, with the exception of approval of the school bus shelters, which must be approved by the school district. 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.

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 design and inspection services shall be performed by a professional landscape architect or engineer. Unless otherwise approved by the Town in writing, all materials used for constructing the Private Improvements shall be new and both workmanship and materials shall be of good quality.

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

3.4 **Completion of Private Improvements:** Unless otherwise agreed in writing by the Town Manager, the Private Improvements 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.

3.5 **Replacement of Private Improvements:** As replacement of the improvements is necessary and warranted over time, the Private Improvements shall be replaced by, as appropriate, the Developer, the homeowner's association or a metropolitan or special district. The Town shall not be responsible for replacement of the Private Improvements.

4. **Dry-Utilities**

4.1 **Utilities:** Developer shall obtain all proper conveyances and arrangements for the installation and provision of the Dry Utilities to serve the Development. Developer shall provide proof of such conveyances and arrangements to the Town, which proof may be in the form of contracts for such services, no later than the date that the Public Improvements are completed.

4.2 **Easements:** All easements approved by the utility companies shall be submitted to the Town.

ACCEPTANCE OF SUBDIVISION IMPROVEMENTS

5.1 **Initial Acceptance:** Developer shall make written application to the Town Manager for initial acceptance of the Subdivision Improvements ("Initial Acceptance") 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. The written application shall include one set of reproducible "as built" drawings and an affidavit executed by Developer affirming that the Subdivision Improvements have been paid in full, certifying the final construction costs and including documentary evidence of the construction costs. If the Town Manager requests, Developer shall provide lien waivers, or other acceptable assurance, from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the design, construction or installation of the Subdivision Improvements. The

affidavit and lien waivers may be reviewed by the Town, but the Town assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided.

After the receipt of the written application, the Town shall use reasonable efforts to promptly inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to Initial Acceptance of the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements. If the Subdivision Improvements are not satisfactory, the Town shall prepare a detailed written description of all Subdivision Improvements which are not in compliance with the Approved Plans, subject to any changes that have been approved by the Town and any changes that have been required by the Town as a result of any unforeseen engineering design issues. Such report shall be delivered to Developer. After curing the defects, Developer shall make a renewed written application to the Town for re-inspection of the Subdivision Improvements, which written application shall contain the items set forth above. The Town shall thereafter use reasonable efforts to promptly re-inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to Initial Acceptance of the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements.

5.2 Maintenance Guarantee. Prior to Initial Acceptance of the Public Improvements for each Phase, 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.

5.3 Delivery of Initial Acceptance. Upon satisfaction of the conditions set forth above in Paragraphs 5.1 and 5.2, the Town shall provide written notice of Initial Acceptance of the Public Improvements and written approval of the Private Improvements to Developer. The Town may issue written notice of Initial Acceptance of the Public Improvements and written approval of the Private Improvements prior to completion of certain of the less critical improvements, as determined and agreed-upon by the Town in its sole discretion. In which case, the Developer may be entitled to obtain building permits prior to completion of all the Subdivision Improvements, assuming satisfaction of the remaining terms of this Agreement and based on conditions otherwise set forth herein.

5.4 Maintenance, Repair and Replacement: Until Final Acceptance of the Public Improvements, Developer shall promptly perform all maintenance and make all repairs and replacements of all defects or failures of the Public Improvements at Developer's expense. If, within ten-(10) days after Developer's receipt of written notice from the Town requesting such maintenance, repairs or replacements, Developer shall not have undertaken with due diligence to

make the same, the Town may make such maintenance, repairs or replacements at Developer's expense and shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter or the Town may charge Developer for the costs thereof. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Maintenance Guarantee. Notwithstanding the foregoing, upon Initial Acceptance, the Town shall be responsible for routine maintenance of the Public Improvements (street sweeping, snow removal, etc.) and the Developer shall be responsible for all maintenance, repairs and replacement of the Private Improvements.

5.5 *Final Acceptance:* Two (2) years after the Town's Initial Acceptance of the Public Improvements, which time period may be extended in the Town's discretion due to remedial or repair work that may be necessary in the first two (2) years by providing written notice to Developer, Developer shall make a written request to the Town Manager for a final inspection of the Public Improvements ("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, the Town Manager shall provide a written certification of completion and Final Acceptance. If the Town Engineer determines that the Public Improvements are not free of defects in materials and workmanship and have not been repaired and maintained to the extent required, 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. Failure of the Developer to make a timely request for Final Acceptance shall not limit the Town's rights hereunder nor shall it limit the Town's right to utilize or operate the Public Improvements as the Town deems appropriate.

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

BUILDING PERMITS

7.1 The Town shall not issue building permits or install water meters 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 cash-in-lieu payments due, if any, to the Thompson School District R2-J; (3) Developer has received written notice of Initial Acceptance of the Public Improvements and written notice of approval of the Private Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete; (4) meter and curb stop pass inspection; (5) the parties have entered into a Water and Sewer Service Agreement; and (6) all terms of this Agreement have been faithfully kept by Developer.

7.2 Notwithstanding the foregoing, the Town may, in its sole discretion, issue building permits prior to completion of certain of the less critical Subdivision Improvements, as determined by the Town in its sole discretion, on the condition that such improvements be completed prior to the issuance of certificates of occupancy.

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

OPERATION STANDARDS

8.1 The operation of construction equipment outside an enclosed structure shall be prohibited between the hours of 8:00 p.m. and, on weekdays, the hour of 7:00 a.m. or, on weekends and legal holidays, the hour of 8:00 a.m. 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. and 7:00 a.m. on weekdays and 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 Amended Final Plat, the Resolution or Approved Plans, Developer shall comply with Johnstown's municipal code, zoning ordinances, subdivision regulations, landscape guidelines and, if operative with respect to the Development, the approved design guidelines.

9.3 Appropriate design standards must be met including, but not limited to, the following:

- A. Developer shall submit detailed elevations showing architectural features of the proposed dwelling units. Architectural features, elevations and home sites shall have prior approval of the Town. Such approvals shall not be unreasonably withheld.
- B. All proposed multi-family areas and all other areas not planned for detached single family units must be the subject of a Site Development

Plan to be reviewed and approved by the Town prior to any construction being performed.

- C. All off-street parking structures or pads shall be provided to the rear of the front setback. Driveways leading to the off-street parking may be constructed within the front setback and may also be used for parking.
- D. In areas built with single family homes, no individual unit shall be built with the same elevation within three (3) of itself on both sides of the street and all units shall have at least a two-car garage, except the multi-family homes.
- E. In areas built with single family homes, at least twenty-five percent (25%) of the facade of each dwelling unit, excluding windows, doors, and garage doors, shall be of masonry, stone, brick, or an equivalent. All roofs shall at minimum have thirty (30) year architectural style shingles. Any shingle type or style other than architectural style shingles shall be submitted to the Town for prior approval, but three-tab conventional asphalt shingle roofing shall not be permitted.
- F. All trails within the Development must be a minimum of ten (10) feet wide and six (6) inches thick and constructed of concrete. Interior sidewalks shall be a minimum of five (5) feet wide, four (4) inches thick and constructed of concrete.
- G. To provide for emergency vehicular access, no structure shall be located in excess of one hundred and fifty feet (150'), excluding cul-de-sacs, from a single point of vehicular access unless an approved temporary second point of vehicular access is provided.
- H. Current Municipal Code required setbacks must be met, including, but not limited to, setback requirements for oil and gas facilities.
- I. A thirty-foot landscape buffer and a ten-foot meandering sidewalk, which shall be six inches thick, shall be constructed along any proposed arterial roads. The landscape buffer shall be landscaped with deciduous trees and evergreens along with deciduous shrub beds and bluegrass in accordance with the Town's approved landscape plan. Curb and gutter shall be provided in the same locations as the before mentioned sidewalks and landscape buffers. All local streets shall have five-foot attached sidewalks and collector streets shall have five-foot detached sidewalks and shall be landscaped with trees and grass.

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

9.5 Developer shall take all necessary steps to prevent its construction activities from harming water quality, water bodies and wetlands. All drainage and holding ponds shall be kept free of standing water by whatever means possible including, but not limited to, pumping water out of any holding ponds.

LIABILITY, INSURANCE AND COST REIMBURSEMENT

10.1 **Indemnification:** Developer hereby agrees to indemnify and hold the Town, Town Officials, its employees, agents, representatives, insurers and self-insurance pool harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees and expenses, including attorney's fees, resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of Developer, its employees, agents, consultants, representatives or subcontractors, except to the extent caused by gross negligence or willful misconduct of the Town. Developer shall promptly investigate, handle, respond to, and provide defense for and defend against any such liability, claims or demands at the sole expense of Developer. Developer also agrees to bear all costs, expenses and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent.

10.2 **Insurance:** Developer shall for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of the Subdivision 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 three hundred fifty thousand dollars (\$350,000.00) for injury to one person, or nine hundred, ninety thousand dollars (\$990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as may be amended. Whenever requested by the Town Manager, Developer agrees to promptly submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and which show the Town, Town Officials, its employees, agents and representatives as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Development Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types. In addition to the insurance specified above, Developer shall maintain workers compensation insurance, if so required by law, and shall require its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of improvements to maintain workers compensation insurance in the amount required by law.

10.3 **Drainage Liability:** Developer shall indemnify and hold the Town harmless from any liability the Town may have on account of any change in the nature, direction, quantity, or quality of drainage flow resulting from the Development. In addition, Developer shall reimburse the Town for any and all costs, fees, and expenses, including attorney's fees, which the Town incurs in acquiring any rights-of-way or easements which the Town is required to acquire or condemn or which the Town is held to have acquired or condemned for drainage as a result of this Development. This provision shall survive Final Acceptance and the termination of this Agreement.

10.4 **Tax Liability:** Developer shall pay all outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the Town prior to or at the time of such dedication or conveyance, and shall indemnify and hold the Town harmless from any and all encumbrances, obligations or tax liability incurred prior to the dedication or conveyance to the Town. Any use tax due for construction materials shall be paid prior to construction of any improvements on the Property.

10.5 **Cost Reimbursement to Town:** Developer shall reimburse the Town for professional consultants, including, but not limited to engineers, testing companies and attorneys, engaged by the Town to process and complete the Development.

10.6 **Colorado Governmental Immunity Act:** Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the Town, Town Officials, employees, contractors, 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 Initial Acceptance and the default is not timely cured, the Town may draw on the Maintenance Guarantee. If the default relates to the improvement secured by the Performance Guarantee and the default is not timely cured, the

Town may draw on the Performance Guarantee. In addition, and without limitation, if the default is not timely cured, the Town may withhold approval of any or all building permits, certificates of occupancy, water meters or tap hook-ups for any area within the Development. Notwithstanding these rights and remedies, the Town may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity or pursuant to this Agreement. The Town's remedies shall be cumulative.

11.3 Should Developer default in any obligation under this Agreement, the Town may, in its discretion, complete such Subdivision Improvements at Developer's expense. The Town shall estimate the cost of such improvements and give notice to Developer to pay such cost estimate. The Town shall use such payment for said improvements and refund any money collected in excess of the actual cost of said improvements. Should payment not be made within thirty (30) days of such notice, the Town may assess the amount of the cost estimate, plus ten percent (10%) to defray the cost of collection as provided by state law, to the Property and file a lien against the Property, such lien to have priority over all liens except general taxes and prior special assessments and to be placed upon the tax list for the current year to be collected in the same manner as taxes are collected. The Town may file such lien at any time after said thirty (30) days while Developer is in default of this Agreement.

SPECIAL PROVISIONS

12.1 The Additional Terms, Conditions or Provisions relating to this Development are set forth in **Exhibit B-3**, which is attached hereto, incorporated herein by this reference, and made a part of this Agreement.

12.2 As set forth in Paragraph 3.5 above, Developer or the homeowner's association, as appropriate, shall be responsible for replacement of decorative light fixtures, decorative street signs and all other decorative amenities in the Development when replacement is necessary and warranted over time.

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:** A Notice of this Agreement substantially in the form as shown on **Exhibit E** is to be recorded with the approved Final Plat and shall be a covenant running with and against all the Property, property rights and improvements contained within the

Development described in **Exhibit A** in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the property on notice as to the terms and obligations herein. No lots, tracts or parcels may be separately conveyed prior to recording such Notice and the Final Plat.

13.4 **Binding Effect:** Unless otherwise provided herein, this Agreement shall be binding upon Developer's heirs, successors, assigns, transferees and any other person or entity acquiring or purchasing any interest in any of the Property described in the attached **Exhibit A**, with the exception of a bona fide residential home buyer of a completed owner-occupied home.

13.5 **Transfer or Assignments:** In the event of a sale or transfer of any portion of the Development, except to a bona fide residential home buyer of a completed owner-occupied home, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless, prior to the transfer or the sale, a written agreement satisfactory to the Town delineating and allocating the various rights and obligations for the Subdivision Improvements has been approved and executed by the Town Council.

13.6 **Title and Authority:** Developer expressly warrants and represents to the Town that it is the record owner of the Property and further represents and warrants that the undersigned has full power and authority to enter into this Agreement. Developer understands that the Town is relying on the representations and warranties contained herein in approving in entering into this Agreement.

13.7 **Notice:** All notices, consents, applications or other instruments provided for under this Agreement shall be deemed properly given and received: (1) when personally delivered and received, when sent by messenger service, or when forwarded by facsimile or email-delivery, but only upon confirmation of receipt of such facsimile or email; (2) on the next day after deposit for delivery with a nationally-recognized overnight courier service; or (3) three business days after deposit in the United States mail, by certified mail with return receipt requested, postage prepaid and addressed as follows:

TO DEVELOPER:

CLAYTON PROPERTIES GROUP II, INC.
Attention: Brad Lenz, Vice President
Land Acquisition and Entitlement
4908 Tower Road

TO TOWN:

TOWN OF JOHNSTOWN
Attention: Town Manager
450 So. Parish
P. O. Box 609

Denver, CO 80249

Johnstown, CO 80534
Facsimile: (970) 587-0141
Email: rcello@townofjohnstown.com

Avi S. Rocklin, Esq.
Law Office of Avi S. Rocklin, LLC
1437 N. Denver Avenue, #330
Loveland, CO 80538
Facsimile: (970) 797-1806
Email: avi@rocklinlaw.com

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 pursuant to §§ 24-68-101, *et seq.*, C.R.S. for a period of three (3) years from the date of this Agreement.

13.10 **Warranty of Developer:** Developer warrants that the Subdivision Improvements shall be installed in a good and workmanlike manner and in compliance with the Approved Plans, this Agreement, the Final Plat, the Resolution, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations and shall be substantially free of any defects in materials and workmanship.

13.11 **Governing Law and Venue.** This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and Municipal Code of the Town of Johnstown. Venue for any claim, proceeding or action arising out of this Agreement shall be in Larimer or Weld County, Colorado.

13.12 **No Presumption.** Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

13.13 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

13.14 **Compliance with the Law.** Developer shall comply with all federal, state and local laws and regulations in the performance of the obligations under this Agreement.

TOWN OF JOHNSTOWN, COLORADO
A Municipal Corporation

By: _____
Mayor Gary Lebsack

ATTEST:

By: _____
Diana Seele, Town Clerk

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
THE TOWN OF JOHNSTOWN
(Thompson River Ranch Filing No. 10)**

EXHIBITS

TABLE OF CONTENTS

EXHIBIT A:	Legal Description of Subject 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:	Schedule of Public Improvements
EXHIBIT D:	Irrevocable Letter of Credit Form
EXHIBIT E:	Notice (Approval of Final Plan/Plat and of Development Agreement)

EXHIBIT A

**LEGAL DESCRIPTION
(Development)**

LEGAL DESCRIPTION:

A PARCEL BEING A PORTION OF TRACT A AND B, BLOCK 7 IN THE THOMPSON RIVER RANCH FILING NO. 5 AS RECORDED AT RECEPTION NUMBER 20170045194 IN THE CLERK AND RECORDER OFFICE OF LARIMER COUNTY AND ALSO BEING A PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 NORTH AT RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND IN THE TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO AND BEING DESCRIBED AS FOLLOWS.

COMMENCING AT THE CENTER-NORTH 1/16 CORNER OF SAID SECTION 23, THENCE S53°50'31"E, A DISTANCE OF 976.60 FEET TO THE WEST LINE OF THE TRACT A, BLOCK 7 OF SAID THOMPSON RIVER RANCH FILING NO. 5 AND THE **POINT OF BEGINNING**;

THENCE ALONG SAID WEST LINE, N05°05'46"E, A DISTANCE OF 219.57 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 143.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 224.62, A CHORD BEARING OF N50°05'46"E WITH A CHORD DISTANCE OF 202.23 FEET TO THE NORTH LINE OF TRACTS A AND B, BLOCK 17 OF SAID THOMPSON RIVER RANCH FILING NO. 5;

THENCE ALONG SAID NORTH LINE OF TRACT A AND B, BLOCK 17 OF SAID THOMPSON RIVER RANCH FILING NO. 5, S84°54'14"E, A DISTANCE OF 519.70 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 143.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 224.62, A CHORD BEARING OF S39°54'14"E WITH A CHORD DISTANCE OF 202.23 FEET TO THE EAST LINE OF TRACT B, BLOCK 17 OF SAID THOMPSON RIVER RANCH FILING NO. 5;

THENCE ALONG SAID EAST LINE OF THE TRACT B, BLOCK 7 OF SAID THOMPSON RIVER RANCH FILING NO. 5, S05°05'46"W, A DISTANCE OF 219.07 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 31.42, A CHORD BEARING OF S50°05'46"W WITH A CHORD DISTANCE OF 28.28 FEET TO A POINT ON THE SOUTH LINE OF TRACTS A AND B, BLOCK 17 OF SAID THOMPSON RIVER RANCH FILING NO. 5;

THENCE ALONG SAID SOUTH LINES THE FOLLOWING THREE (3) COURSES:

1. N84°54'14"W, A DISTANCE OF 10.00 FEET;
2. THENCE N84°56'32"W, A DISTANCE OF 745.67 FEET;
3. THENCE N84°54'14"W, A DISTANCE OF 10.03 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 31.42, A CHORD BEARING OF N39°54'14"W WITH A CHORD DISTANCE OF 28.28 FEET TO THE POINT OF BEGINNING.

CONTAINING 299,091 SQUARE FEET OR 6.87 ACRES MORE OR LESS.

EXHIBIT B-1

PLAT OR PLAN

(SEE ATTACHED)

EXHIBIT B-2

(RESOLUTION APPROVING PLAT OR PLAN)

(SEE ATTACHED)

EXHIBIT B-3

ADDITIONAL TERMS, CONDITIONS OR PROVISIONS

1. Developer shall complete construction of the community building and swimming pool described in the Final Development Plan 'A' and 'B' for Thompson River Ranch Filing No. 1 approved June 5, 2006, on or before the issuance of 500 certificates of occupancy by the Town beyond those certificates of occupancy issued for Thompson River Ranch Filing Nos. 1, 3 and 4, or by June 30, 2023, whichever is earlier.
2. On or before Developer obtains the 120th building permit in the Thompson River Ranch Development, exclusive of Filing Nos. 1, 3, 4 and 9, Developer shall have completed construction to improve Larimer County Road 3 (High Plains Boulevard) to an Interim Arterial standard, as described in the Town Design Criteria, within Town Limits from River Ranch Parkway to the Hillsborough Ditch crossing. The road shall be extended as a special Interim Arterial section across the Hillsborough Ditch south to Larimer County Road 18, with access improvements onto County Road 18 as determined by the Town Traffic Engineer.
3. Landscaping, signage, street lighting and related Private Improvements are subject to the Thompson River Ranch Design Guidelines and the final Site Development Plan for this Development.
4. Developer shall comply with all obligations and procedures required by the Federal Emergency Management Agency for the Development.

EXHIBIT C

**SCHEDULE OF PUBLIC IMPROVEMENTS
(ATTACHED)**

EXHIBIT D

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

EXHIBIT E

NOTICE

Please take notice that on the ____ day of _____, 2019, the Town Council of the Town of Johnstown approved the final plat for the development known as Thompson River Ranch Filing No. 10, which development was submitted and processed in accordance with the Town of Johnstown's Municipal Code. In conjunction therewith, the Town Council also approved a Development Agreement dated _____, 2019, between the Town Johnstown and the Developer, pursuant to and under which certain rights and obligations of the Developer will pass on to subsequent owners, heirs, assigns and transferees of the below-described property. The Development Agreement is on file and may be reviewed in the office of the Town Clerk of the Town of Johnstown. The subject property for which such Development Agreement applies is described as follows:

LEGAL DESCRIPTION ATTACHED

DATED this _____ day of _____, 2018.

Town Clerk

Town Manager

LEGAL DESCRIPTION:

A PARCEL BEING A PORTION OF TRACT A AND B, BLOCK 7 IN THE THOMPSON RIVER RANCH FILING NO. 5 AS RECORDED AT RECEPTION NUMBER 20170045194 IN THE CLERK AND RECORDER OFFICE OF LARIMER COUNTY AND ALSO BEING A PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 NORTH AT RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND IN THE TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO AND BEING DESCRIBED AS FOLLOWS.

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CONTAINING 299,091 SQUARE FEET OR 6.87 ACRES MORE OR LESS.

ATTACHMENT 2

Water and Sewer Service Agreement

- **Helton & Williamsen Memo**
- **Average Annual Water Demand Worksheet**
- **Water and Sewer Service Agreement – Signed by Developer**

Helton & Williamsen, P.C.
Consulting Engineers in Water Resources
7353 S. Alton Way, Suite A-125
Centennial, Colorado 80112
Phone (303) 792-2161
E-mail: twilliamsen@helton-williamsen.com

MEMORANDUM

May 15, 2018

To: Pete Ampe and John Franklin

From: Tom Williamsen

Subject: Water demand estimate – Thompson River Ranch Filing 10

This memorandum summarizes my review of the water demand and consumptive use estimates prepared by Dawn Becker on behalf of Oakwood Homes for the Thompson River Ranch Filing 10 dated November 16, 2017. Thompson River Ranch Filing 10 is located on 6.87 acres in a portion of Tract A and B Thompson River Ranch Filing No. 5 in the S½NE¼ of section 23 T.5N., R.68W. The project includes 40 single-family homes with 3.45 acres of irrigated landscape (average of 3,760 ft² per home) plus 0.6 acre of other irrigated areas. The other irrigated area consists of irrigated landscaping along streets and entry features and its water supply source is the non-potable irrigation system operated by Thompson Crossing Metropolitan District No. 3.

The annual water demands are estimated as:

Residential in-building	13.20 acre-feet
Residential irrigation	<u>8.63 acre-feet</u>
Total (potable)	21.83 acre-feet
Non-potable irrigation	1.50 acre-feet

The annual consumptive use will be:

Residential in-building	0.66 acre-feet
Residential irrigation	<u>7.34 acre-feet</u>
Total (potable).....	8.00 acre-feet
Other irrigation (non-potable) ...	1.28 acre-feet

The consumptive use attributable to the potable water demand equates to 50 SFEs. Oakwood Homes has conveyed Consolidated Home Supply Ditch and Reservoir Company shares to Johnstown for earlier filings. The carryover raw water credit from Filing 9 may be assigned to Filing 10. Also Oakwood recently assigned 17 unchanged Home Supply shares to Johnstown representing 108.8 acre-feet of raw water credit. The water court transfer fees were paid at the time the shares were assigned to Johnstown. Enclosed is a copy of the Water Demand Worksheet showing my notes and corrections.

Enclosure

LN 5/11/18

TOWN OF JOHNSTOWN

AVERAGE ANNUAL WATER DEMAND WORKSHEET

(Rev. 9/03)

Project Name: Thompson River Ranch - Filing 10 6.87 ac

Contact Person: Dawn Becker

Telephone: 303-734-1777

Values should be averages for entire project

<u>Lot Usage:</u>		
Lot Size:	5,760 SF	
<u>Breakdown:</u>		
Building footprint	1,500 SF	
Garage	SF	
Driveway	300 SF	
Sidewalks	50 SF	
Patios	150 SF	
Irrigated landscaping	3,760 SF	
Other non-irrigated area		
Total	5,760 SF	

Portion of Tract A and B Thompson on River Ranch Filing No. 5 5 1/2 Acre sec. 23 T. 5N., R. 68W. 6th Pm

A. Irrigation demand for Residential:		
Subtotal:	Total number of single family lots	40 UNITS
X	Average irrigated area per lot (sq. ft.)	3,760 SF
		43,560 3.45 ac
X		<u>2.5 AF/A</u>
Subtotal:	Attached and Multi-family total : irrigated area (sq. ft.)	
		<u>43,560</u>
X		<u>2.5 AF/A</u>
Total		8.6 AF 8.63 ac

5/14/18 TFCW/Josh Rowland - street ROW & entry features will be irrigated by TCMDS non-potable irrigation system

B. Other Usage:

Irrigated Parks	
Irrigated Entry features	
Irrigated Street R.O.W.	0.4 ACRES
Other irrigated areas	0.2 ACRES
Subtotal	0.6 ACRES

C. Irrigation demand for other usage:

Subtotal: Total acreage	0.6 ACRES	
X	2.5 A F / A	<i>Non-potable</i>
=	1.5 AF	<i>1.50 af</i>

Total AF from Box A	8.6 AF	<i>8.63</i>
Total AF from Box C	1.5 AF	<i>1.50</i>
Total	10.1 AF	<i>10.13</i>

Summary of Average Annual Water Requirements

<u>Type</u>	<u>Units</u>	<u>Unit Requirement</u>	<u>Annual Requirement</u> <u>(acre feet)</u>
A. INSIDE USE			
1. Single - Family Detached	40 LOTS	0.33 A F / lot	13.2 AF ✓
2. Multi-Family	units	0.29 A F / unit	
3. Commercial	sq. ft	0.10 gpd / sq ft	
4. Office	sq. ft	0.16 gpd / sq ft	
5. Light Industrial	sq. ft	0.06 gpd / sq ft	
6. Other			
TOTAL INSIDE USE:			13.2 AF
IRRIGATION			
1. Reside	40 LOTS		8.6 AF ✓ 8.63
2. Comm	0 acres	2.5 AF / acre	
3. Office	0 acres	2.5 AF / acre	
4. Light I	0 acres	2.5 AF / acre	
5. Parks	0 acres	2.5 AF / acre	
6. Other	0.6 acres	2.5 AF / acre	1.5 AF ✓
TOTAL OUTSIDE USE:			10.1 AF 10.13

Average Annual Consumptive Use

<u>Inside Use</u>	
Total Demand (13.2 AF)	x 0.05 = 0.66 AF ✓
<u>Irrigation Use</u>	
Total irrigation demand (10.1 AF) ^{10.13}	x 0.85 = 8.59 AF 8.61
TOTAL	9.25 AF 9.27

APPLICANT: Clayton Properties

By: Dawn Becker
(Authorized Representative)

Date: 11/16/2017

Total potable demand = 13.2 + 8.63 = 21.83 acft

$$\text{Demand} = \frac{21.83}{0.5 \text{ acft/sfc}} = 44 \text{ sfc}$$

$$\text{CU} = \frac{0.66 + 8.63 \times 0.85}{0.0165 + 0.1445} = \frac{7.9955 \text{ acft}}{0.161 \text{ acft/sfc}} = 50 \text{ sfc} \checkmark$$

Water and Sewer Service Agreement

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this 18th day of November, 2019, by and between **CLAYTON PROPERTIES GROUP II, INC.**, a Colorado corporation d/b/a Oakwood Homes ("Developer") and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, ("Town"), collectively sometimes referred to as the "Parties" and singularly as "Party."

WITNESSETH:

WHEREAS, Developer owns an interest in land located in Tract A and B in the S½NE¼ of Section 23, T.5N., R.68W., 6th P.M., Larimer County, Colorado, more particularly on Exhibit "A" attached hereto and incorporated herein by this reference, containing approximately 6.87 acres ("Subject Property"); and

WHEREAS, the Subject Property was annexed to the Town as part of a larger annexation of 1109.18 acres of land, which was the subject of an Annexation Agreement between Thompson Ranch, LLLP, The Gerrard Family Limited Partnership, LLLP, Joel H. Wiens, and Rite-A-Way Industries, Inc., as Developer, and the Town dated December 18, 2000; and

WHEREAS, the Subject Property is being developed by Developer as the Thompson River Ranch Filing No. 10; and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Subject Property.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code ("Ordinance"), Developer has submitted to the Town a preliminary Water and Sewer Demand Analysis for the Subject Property dated November 16, 2017. Said analysis is on file with the Town and is hereby accepted by the Town, as modified by the Town's Water Engineer by memorandum dated May 15, 2018. The analysis addresses all of the projected water demands for the Subject Property. Said analysis indicates that the water dedication set forth in Paragraph 2 will meet the estimated water supply needs for the Subject Property as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
Residential In-building	13.20	0.66
Residential Irrigation	8.63	7.34
Common Area Landscape Irrigation (non-potable)	1.50	1.28
Total	23.33	9.28

2. Water Rights Dedication and Credits.

A. Preexisting Credit.

i. Home Supply. After dedication to satisfy the requirements of the water supply for the Thompson River Ranch Filing No. 9, Developer had a net surplus credit of 12.02 acre-feet of raw water credit. Developer subsequently assigned 17 non-municipal shares of Consolidated Home Supply Ditch & Reservoir Company (“Home Supply”) to the Town, representing 108.8 acre-feet of raw water credit. In total, prior to the use of water for the Subject Property, Developer has a total credit from Home Supply Share dedications in the amount of 120.82 acre-feet.

ii. SFE Water Bank. Pursuant to an Assignment, Assumption and Bill of Sale from W.R. Investment, LLC (“WRI”) and Exit 223, LLC to Clayton Properties Group II, Inc. d/b/a Oakwood Homes, dated on or about September 19, 2018, Developer acquired a water bank containing 610 single family equivalent (“SFE”) from WRI.

iii. Common Area Landscape. Pursuant to the Water Agreement between the Town and W.R. Investment, LLC (“WRI”), dated on or about May 7, 2018, and the Assignment, Assumption and Bill of Sale from WRI and Exit 223, LLC to the Developer, the Town has agreed to provide non-potable water for up to 96 acres of common area irrigation for the Thompson River Ranch Development (“Town Common Area Irrigation Supply”). Prior to the use of water for the Subject Property, the Developer has irrigated 51.58 acres of common area.

B. Credit for the Subject Property.

i. Residential In-Building and Residential Irrigation. The Parties agree that the credit from Home Supply Share dedications will be applied to meet the residential in-building and residential irrigation water demands of the Subject Property.

ii. Common Area Landscape. The Parties agree that the Subject Property will contain 0.6 acres of common area irrigation to be used from the Town Common Area Irrigation Supply. The common area irrigation is equivalent to 1.5 acre-feet of water demand.

3. Surplus Dedication Credit.

i. Residential In-Building and Residential Irrigation. The use of the prior Home Supply Share dedication credits will provide to Developer water in excess of the demand for the Subject Property. Developer will have a surplus Home Supply Share dedication credit with the Town of 98.99 acre-feet of raw credit. The credit is calculated as follows:

Existing Credit:	120.82 acre-feet
LESS: Estimated demand:	<u>21.83 acre-feet</u>
Net current surplus credit:	98.99 acre-feet

Upon notice and written approval of the Town, authorization from Developer, and payment of the appropriate Water Court Transfer Fee, if necessary, said credit may be utilized within the Subject Property to offset increased demands, if any, which are not currently projected.

ii. Common Area Landscape. The use of the prior Town Common Area Irrigation Supply will provide the Developer water in excess of the demand for the common area of the Subject Property. The credit is calculated as follows:

Total available acreage:	96.00 acres
Prior irrigated acreage:	51.58 acres
Current demand:	<u>0.60 acres</u>
Available acreage credit:	43.82 acres

Upon written agreement between the Town and the Developer, the available acreage credit may be used for common area irrigation in the Thompson River Ranch Development.

4. Commitment to Serve Water and Sewer. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property up to 21.83 acre-feet per year of water supply for residential in-building use together with the corresponding sewer service and for residential irrigation as described above. The Town further agrees to provide up to 1.5 acre-feet of non-potable water for 0.6 acres of common area irrigation.

5. Future review of water usage and dedication requirements. In accordance with Section 13-68(h) of the Ordinance, the Town reserves the right to review actual water usage within the Subject Property at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments if necessary based on actual water usage.

6. Payment of Water Court Transfer fees. The Water Court transfer fee for the Home Supply Share dedications water supply was previously paid to the Town. However, in

accordance with the Ordinance, additional fees may be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the parties in accordance with the Town's Ordinance.

7. **Notices.** All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

Clayton Properties Group II, Inc.
Attn: Brad Lenz
Vice President,
Land Acquisition and Entitlement
4908 Tower Road
Denver, CO 80249

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
P.O. Box 609
450 S Parish Ave.
Johnstown, CO 80534

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538

Peter J. Ampe
Hill & Robbins, P.C.
1160 Lincoln St., Suite 2720
Denver, CO 80264

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

8. **Default.** In the event of default by either Party hereunder the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

9. **Successors and assigns.** The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This agreement shall not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld.

10. **Amendment or modification.** No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

11. **Attorney's fees and costs.** If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the Town shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

12. **Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

13. **Headings for convenience only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

14. **Non severability.** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

15. **Choice of laws.** This agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado.

16. **Entire agreement.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

17. **Recordation.** This Agreement will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado, shall run with the Subject property, will be binding upon the Parties hereto and the permitted successors and assigns of the Developer and will constitute notice of this Agreement to all persons or entities not parties hereto.

*IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

Signatures follow on separate pages

EXHIBIT A

**LEGAL DESCRIPTION
(Development)**

LEGAL DESCRIPTION:

A PARCEL BEING A PORTION OF TRACT A AND B, BLOCK 7 IN THE THOMPSON RIVER RANCH FILING NO. 5 AS RECORDED AT RECEPTION NUMBER 20170045194 IN THE CLERK AND RECORDER OFFICE OF LARIMER COUNTY AND ALSO BEING A PORTION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 NORTH AT RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND IN THE TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO AND BEING DESCRIBED AS FOLLOWS.

COMMENCING AT THE CENTER-NORTH 1/16 CORNER OF SAID SECTION 23, THENCE S53°50'31"E, A DISTANCE OF 976.60 FEET TO THE WEST LINE OF THE TRACT A, BLOCK 7 OF SAID THOMPSON RIVER RANCH FILING NO. 5 AND THE **POINT OF BEGINNING**;

THENCE ALONG SAID WEST LINE, N05°05'46"E, A DISTANCE OF 219.57 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 143.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 224.62, A CHORD BEARING OF N50°05'46"E WITH A CHORD DISTANCE OF 202.23 FEET TO THE NORTH LINE OF TRACTS A AND B, BLOCK 17 OF SAID THOMPSON RIVER RANCH FILING NO. 5;

THENCE ALONG SAID NORTH LINE OF TRACT A AND B, BLOCK 17 OF SAID THOMPSON RIVER RANCH FILING NO. 5, S84°54'14"E, A DISTANCE OF 519.70 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 143.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 224.62, A CHORD BEARING OF S39°54'14"E WITH A CHORD DISTANCE OF 202.23 FEET TO THE EAST LINE OF TRACT B, BLOCK 17 OF SAID THOMPSON RIVER RANCH FILING NO. 5;

THENCE ALONG SAID EAST LINE OF THE TRACT B, BLOCK 7 OF SAID THOMPSON RIVER RANCH FILING NO. 5, S05°05'46"W, A DISTANCE OF 219.07 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 31.42, A CHORD BEARING OF S50°05'46"W WITH A CHORD DISTANCE OF 28.28 FEET TO A POINT ON THE SOUTH LINE OF TRACTS A AND B, BLOCK 17 OF SAID THOMPSON RIVER RANCH FILING NO. 5;

THENCE ALONG SAID SOUTH LINES THE FOLLOWING THREE (3) COURSES:

1. N84°54'14"W, A DISTANCE OF 10.00 FEET;
2. THENCE N84°56'32"W, A DISTANCE OF 745.67 FEET;
3. THENCE N84°54'14"W, A DISTANCE OF 10.03 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 31.42, A CHORD BEARING OF N39°54'14"W WITH A CHORD DISTANCE OF 28.28 FEET TO THE POINT OF BEGINNING.

CONTAINING 299,091 SQUARE FEET OR 6.87 ACRES MORE OR LESS.

AGENDA ITEM 10C

**Public Hearing
1st Reading**

**An Ordinance Replacing Chapter 4
Of the Johnstown Municipal
Code Concerning Town Revenues
And Finances**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: December 2, 2019

ITEM NUMBER: 10C

SUBJECT: Introduction and Consideration of Ordinance No. 2019-167, An Ordinance Replacing Chapter 4 of the Johnstown Municipal Code Concerning Town Revenue and Finances.

ACTION PROPOSED: Approve Ordinance No. 2019-167

ATTACHMENTS: N/A

PRESENTED BY: Mitzi McCoy, Finance Director

AGENDA ITEM DESCRIPTION:

Ordinance No. 2019-167 replaces the existing Chapter 4 Revenue and Finance, Articles I through VII and replaces it with a revised Chapter 4 Revenue and Finance, Articles I through IX. During a work session in May, staff presented a new fund structure to Council for consideration for use in the 2020 Budget. With Council approval, the current proposed 2020 Budget document was developed using the new fund structure. One of the primary components of the Chapter 4 revision is to formally create the new funds in the Town's Municipal Code.

In addition to the changes to the fund structure, the Finance Department and the Town Manager have undertaken the rest of this section of the Johnstown Municipal Code to remove redundancy, be more consistent with other municipal requirements, correct deficiencies and to update and streamline processes. The existing chapter of the municipal code has not been significantly updated for over twenty years.

Many of the changes are non-substantive. These changes include establishing and reserving sections of the code for future expansion, adding static due dates to the budget section, eliminating historical dates that were in several sections, and eliminating the section on the publication of financials as that is addressed in the proposed Town of Johnstown Financial Policies. Other non-substantive changes include correcting typographical, grammatical, and formatting deficiencies, including renumbering the Articles so that there is no longer the duplicate use of Article VII.

In addition to the non-substantive changes, the Ordinance under consideration includes several changes that are substantive as detailed below:

1. Article III
 - a. New funds are established and funds that are no longer being utilized have been eliminated.
 - b. The Street and Alley Fund creation includes allocation of revenues from the motor vehicle use taxes, as the source and use are directly related, instead of having those tax revenues go into the Capital Project Fund.

- c. A clause was added that allows funds to be commingled for investment purposes which eliminates the need to maintain an unnecessary number of bank accounts. The accounting software that we utilize is designed to accurately allocate and manage pooled cash.
- 2. Article IV
 - a. The \$1.00 sales tax on business licenses was eliminated.
 - b. Section 4-56 (9) was added that requires use tax for construction to be remitted directly to the Town.
- 3. Article V
 - a. Section 4-75 was reworded so that not all of the construction use tax is directed to the Capital Projects Fund and instead, a portion of use taxes is credited to the Capital Projects Fund. This revision was made after careful review of the sales tax ballot language from the election on November 5, 2002. The ballot language reads "... INCREASING THE CURRENT RATE OF THE TOWN'S SALES AND USE TAX BY ONE PERCENT (1%), THE REVENUE DERIVED FROM THE USE TAX INCREASE TO BE USED FOR THE PURPOSE OF FUNDING CAPITAL IMPROVEMENT PROJECTS TO INCLUDE A NEW LIBRARY, COMMUNITY/SENIOR CENTER, AND RECREATION CENTER..."
- 4. Article VI
 - a. The section requiring a funds deposit agreement was eliminated. The funds deposit is included in the cost agreement that developers enter into as required by the Article VI, Section 4-91.
- 5. Article VIII
 - a. Section 4-104, requiring lodging facilities to obtain a certification of registration was added. This certification essentially serves as a lodging tax license that must be conspicuously displayed at each location.
- 6. Article IX
 - a. Unclaimed Property was added.

LEGAL ADVICE:

Ordinance 2019-167 was prepared by Legal Counsel.

FINANCIAL ADVICE:

Financial impacts are minimal and difficult to quantify, although a slight reduction in staff time is anticipated due to modifications of the chapter.

RECOMMENDED ACTION:

SUGGESTED MOTIONS:

For Approval:

I move to approve Ordinance 2019-167, an Ordinance Replacing Chapter 4 of the Johnstown Municipal Code Concerning Town Revenue and Finances.

For Denial:

I move to deny Ordinance 2019-167, an Ordinance Replacing Chapter 4 of the Johnstown Municipal Code Concerning Town Revenue and Finances.

Reviewed and Approved for Presentation:

Town Manager

TOWN OF JOHNSTOWN, COLORADO

ORDINANCE NO. 2019-167

AN ORDINANCE REPLACING CHAPTER 4 OF THE JOHNSTOWN MUNICIPAL CODE CONCERNING TOWN REVENUE AND FINANCES

WHEREAS, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, Chapter 4 of the Johnstown Municipal Code contains regulations addressing Town revenue and finances; and

WHEREAS, Chapter 4 is comprised of numerous sections that were carried forward from the Town’s prior code, which was superseded and replaced by Ordinance No. 463 adopted in August of 1991, and other sections adopted many years ago that are subject to modification to conform with existing practice; and

WHEREAS, based upon the recommendation of the Town Manager and Town Finance Director, Town Council desires to replace Chapter 4 with the provisions set forth in Section 1 below; and

WHEREAS, Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property, that this Ordinance is necessary for the protection of public convenience and welfare and that this Ordinance is in the best interests of the citizens of the Town.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:

Section 1. Chapter 4. Chapter 4 of the Johnstown Municipal Code is hereby deleted in its entirety and replaced with the following:

CHAPTER 4 REVENUE AND FINANCES

ARTICLE I - Fiscal Year, Finances

Sec. 4-1. Fiscal year same as calendar year.

The fiscal year of the Town shall commence on the first day of January and end on the last day of December of each year.

Sec. 4-2. Annual budget.

No later than October 15th of each year, the Town Manager, as designated by the Town Council and required by Colorado Law, shall submit to the Town Council the proposed annual budget for the ensuing

fiscal year. The budget as approved by the Town Council shall be adopted and administered in accordance with the provisions of the Local Government Budget law of the State.

Sec. 4-3. Rate of tax levy.

The Town Council shall by resolution fix the rate of tax to be levied upon all the taxable property within the Town for municipal purposes and, through the Town Treasurer, shall officially certify said levy to the County Commissioners of both Weld and Larimer County respectively prior to December 15 of each year.

Sec. 4-4. Annual appropriation.

The Town Council shall pass an ordinance or resolution within the last quarter of each fiscal year appropriating such sums of money as are necessary to cover the items in its budget and defray all necessary expenses and liabilities of the Town, specifying the objects and purposes for which such appropriations are made and the amount appropriated for each object or purpose. The total amount appropriated shall not exceed the probable amount of revenue and reserves available during the fiscal year.

Sec 4-5. Delinquent charges.

The Town Council may cause any or all delinquent charges, assessments, fees or taxes made or levied to be certified to the treasurer of the county and be collected and paid over by the treasurer of the county.

Secs. 4-6 - 4-20. Reserved.

ARTICLE II - Administration

Sec. 4-21. Deposits; investments; funds.

The Town Treasurer shall deposit all of the funds and monies which come into his or her possession by virtue of the office as Town Treasurer in one (1) or more responsible banks located in the State which have been designated by written resolution of the Town Council. The Town Council may also authorize the Town Treasurer, by written resolution, to invest all or any part of such funds in securities which are authorized for such investment by state law.

Sec. 4-22. Annual audit.

The Town Council shall select a qualified person or firm as auditor and cause to be made an annual audit of the financial affairs and transactions of the Town in accordance with the requirements of state law ("Auditor"). The Auditor shall audit the books and records of the Town and its financial affairs and transactions at least once each year, in the form provided by state law, and shall make a written report to the Town Council after each audit of the condition of the Town's finances and the results of the Auditor's examination. The Auditor may make recommendations to the Town Council concerning the system of keeping the books, records and accounts of the Town.

Sec. 4-23. Certification of a lien; withholding or revoking approval.

All fees, charges, taxes or assessments owed to the Town shall constitute a prior, perpetual lien upon each lot or parcel of land of the owner, developer, or licensee from the due date thereof until paid. If such fee, charge, tax or assessment is not paid when due, in addition to any such other means as provided by law, the Town Clerk or Town Treasurer may certify such lien to the County Treasurer and the fee, charge, tax or assessment shall be collected in the same manner as though it were part of the taxes. Fees, charges, taxes or assessments shall include, but are not limited to, any development fees and charges assessed

under any annexation or subdivision improvement agreements, development impact fees assessed by resolution or ordinance and any other financial obligation imposed by resolution or ordinance. The Town reserves the right to withhold or revoke any permits, certificates or other approvals for any land use or license for which payment of any fee, charge, tax or assessment is delinquent.

Secs. 4-24—4-30. Reserved.

ARTICLE III – General Fund, Special Funds and Enterprise Funds

Sec. 4-31. General Fund created.

There is hereby created a fund, to be known as the General Fund, which shall consist of the following:

- (1) All cash balances of the Town not specifically belonging to any existing special fund or enterprise fund of the Town; and
- (2) All fixed assets of the Town not specifically belonging to any existing special fund or enterprise fund of the Town.

Sec. 4-32. Cemetery Perpetual Care Fund.

- (1) There is created a special fund, to be known as the Cemetery Perpetual Care Fund, for revenues collected, received and administered pursuant to Article VI of Chapter 11 of the Code, as amended.

Sec. 4-33. Conservation Trust Fund.

- (1) There is hereby created a special fund, to be known as the Conservation Trust Fund, for revenues collected or received pursuant to Section 29-21-101, C.R.S., and for other revenue, if any, Town Council may appropriate to such fund.
- (2) All moneys taken or expended from said Conservation Trust Fund shall be used only for the purposes sought to be accomplished by state law, including the acquisition, development, and maintenance of new conservation sites or capital improvements or maintenance for recreational purposes on any public site, as provided in Section 29-21-101, C.R.S., as amended.

Sec. 4-34. Park and Open Space Fund.

- (1) There is hereby created a special fund, to be known as the Parks and Open Space Fund, for the purchase, development, and maintenance of parks lands, open space lands, and trails that offer either passive or active recreational use throughout the Town.
- (2) There shall be transferred to the Parks and Open Space Fund all money, including investment income, from the one-quarter of one (0.25) cent per dollar open space sales and use tax collected and remitted to the Town from Larimer County.
- (3) Such funds shall be expended for payment of the expenditures related to the purposes set forth in this Section or as otherwise authorized by the Town Council.

Sec. 4-35. Recreation Center Fund.

- (1) There is hereby created a special fund, to be known as the Recreation Center Fund.
- (2) Revenue shall be provided by the General Fund to the Recreation Center Fund, unless alternate sources of funding are available, certain of which may require ballot approval.

- (3) Such funds shall be expended for the payment of expenditures for the operations, maintenance and capital projects for the Johnstown Community Recreation Center and for other such purposes authorized by the Town Council.

Sec. 4-36. Street and Alley Fund.

- (1) There is hereby created a special fund, to be known as the Street and Alley Fund.
- (2) Revenue shall be provided to the Street and Alley Fund from fees, vehicle taxes, motor and other vehicle use taxes, transportation associated grants and all other revenues associated with transportation.
- (3) Except as otherwise restricted, such funds shall be expended for the payment of expenditures associated with construction, maintenance and capital improvements of streets, alleys, bridges, sidewalks, curbs and gutters, street signs, street striping, street cleaning, snow removal, acquisition of property and equipment, and other activities involving transportation and related infrastructure as deemed appropriate by the Town.

Sec. 4-37. Tax Allocation Fund.

- (1) There is hereby created a special fund, to be known as the Tax Allocation Fund.
- (2) Revenue shall be provided to the Tax Allocation Fund from sales and use taxes received from specific development areas wherein, pursuant to the terms of written agreements between the Town and the developer, the Town has agreed to reimburse a developer for the cost of public improvements.

Sec. 4-38. Library Fund.

- (1) There is hereby created a special fund, to be known as the Library Fund.
- (2) Revenue shall be provided to the Library Fund from property tax revenue collected from the Town and from the High Plains Library District, user fines and fees, grants, and contributions. The Town commits to provide property tax revenue from 3.3 mills annually, which includes the 1.8 mills approved by voters.
- (3) Except as otherwise restricted, funds shall be expended for the payment of library-related costs associated with building and infrastructure construction, operations and maintenance, materials, equipment, programming, outreach, and other appropriate activities.

Sec. 4-39. Capital Projects.

- (1) There is hereby created a special fund, to be known as the Capital Projects Fund, for the acquisition of property and equipment, the construction of streets, walkways and bridges, the construction of public buildings and public infrastructure, and the planning and engineering studies to implement the above-mentioned capital facilities.
- (2) There shall be transferred to the Capital Projects Fund all money, including investment income, from the existing Use Tax Capital Improvement Fund, which shall thereafter be abolished.
- (3) Revenues shall be provided to the Capital Projects Fund from one percent (1%) of the use tax collected on building materials and construction materials utilized within the Town.

Sec. 4-40. Sanitary Sewer Fund.

- (1) There is hereby created an enterprise fund, to be known as the Sanitary Sewer Fund, within the meaning of Section 20 of Article X of the Colorado Constitution.
- (2) The Sanitary Sewer Fund revenues shall be derived, collected and administered pursuant to Article II of Chapter 13 of the Code, as amended, and shall receive less than ten percent (10%) of its annual revenue from Colorado state and local government grants combined.

Sec. 4-41. Water Fund.

- (1) There is hereby created an enterprise fund, to be known as the Water Fund, within the meaning of Section 20 of Article X of the Colorado Constitution.
- (2) The Water Fund revenues shall be derived, collected and administered pursuant to Article III of Chapter 13 of the Code, as amended, and shall receive less than ten percent (10%) of its annual revenue from Colorado state and local government grants combined.

Sec. 4-42. Drainage Fund.

- (1) There is hereby created an enterprise fund, to be known as the Drainage Fund, within the meaning of Section 20 of Article X of the Colorado Constitution.
- (2) The Drainage Fund revenues shall be derived, collected and administered pursuant to Article VII of Chapter 13 of the Code, as amended, and shall receive less than ten percent (10%) of its annual revenue from Colorado state and local government grants combined.

Sec. 4-43. Custody and management of funds.

Moneys in the funds herein created shall be in the custody of and managed by the Town Treasurer. The Town Treasurer shall maintain accounting records and account for all of said moneys as provided by law. Unless otherwise provided, moneys across the various funds of the Town may be commingled for purposes of investments or deposited by the Town Treasurer in accordance with the provisions of law so long as accurate records are kept of the amount of such funds, inclusive of enterprise funds and development fee funds, allocable to each individual fund. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Article or by other ordinances or laws or by this Code, the Town Council may transfer out of any fund, any amount, at any time to be used for such purpose as the Town Council may direct.

Secs. 4-44—4-50. Reserved.

ARTICLE IV - Sales Tax

Sec. 4-51. Purpose.

The purpose of this Article is to impose a sales tax on the sale of tangible personal property at retail or the furnishing of services, the sale of which tangible personal property and services are taxable pursuant to the Emergency Retail Sales Act of 1935, Section 39-26-101, *et seq.*, C.R.S., as amended (for purposes of this Article, "the Act").

Sec. 4-52. Definitions.

For the purpose of this Article, the definitions of words herein contained shall be as defined in Section 39-26-102, C.R.S., as amended, and said definitions are incorporated herein by this reference.

Sec. 4-53. Amendments to Article.

The Town Council may amend, alter or change this Article, except as otherwise provided by law.

Sec. 4-54. Penalty.

Any person convicted of violating any of the provisions of this Article shall be punished as provided in Section 1-62 of the Code.

Sec. 4-55. License for retail sale of tangible property.

- (1) It shall be unlawful for any person to engage in the business of selling tangible personal property at retail or furnishing certain services as set forth in 39-26-104, C.R.S., as amended, without first having obtained a license therefor. Such license shall be granted and issued by the Town Clerk and shall be in force and effect until December 31 of the year in which it is issued, unless sooner revoked.
- (2) Such license shall be granted and renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location and such other facts as the Town Clerk may require.
- (3) It shall be the duty of each licensee on or before January 1 of each year during which this Article remains in effect to obtain a renewal thereof if the licensee remains in the retail business or liable to account for the tax herein provided, but nothing herein contained shall be construed to empower the Town Clerk to refuse such renewal except upon revocation for cause of licensee's prior license.
- (4) In case business is transacted at one (1) or more separate premises by one (1) person, a separate license for each place of business shall be required.
- (5) Any person engaged in the business of selling tangible personal property at retail or furnishing certain services in the Town, without having secured a license therefor, except as specifically provided herein, shall be guilty of a violation of this Code.
- (6) Each license shall be numbered and shall show the name, residence, place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.
- (7) No license shall be required for any person engaged exclusively in the business of selling tangible personal property which is exempt from taxation under this Article.
- (8) The fee for a business license and for renewal of the license shall be in the amount provided by resolution adopted by Town Council.

Sec. 4-56. General application of tax and exemptions.

- (1) For the purpose of collection, exemption, administration and enforcement of this Article by the Director of Revenue, the provisions of the Act shall be deemed applicable and incorporated into this Article.
- (2) The amount subject to tax under this Article shall not include the state sales and use tax imposed by the Act.
- (3) For the purpose of this Article, all retail sales shall be considered consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to a final destination outside the limits of the Town or to a common carrier for delivery to a final destination outside the limits of the Town.

- (4) The gross receipts from sales shall include delivery charges, when such charges are subject to the state sales and use tax imposed by the Act, regardless of the places to which delivery is made.
- (5) In the event a retailer has no permanent place of business in the Town, or more than one (1) place of business, the place or places at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of the Act, and by the rules and regulations promulgated by the State Department of Revenue.
- (6) The Town shall permit the retailer to withhold a collection fee in an amount of money equal to three and one third percent (3.33%) of the total sales tax collected.
- (7) The tax imposed by this Article shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed upon the purchaser or user by another statutory or home rule municipality equal to or in excess of three percent (3%). A credit shall be granted against the tax imposed by this Article with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed three percent (3%).
- (8) The Town's sales tax shall not apply to the sale of construction and building materials, as the term is used in Article V of this Chapter, if such materials are picked up by the purchaser in the Town and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the Town evidencing that a local use tax has been paid or is required to be paid.
- (9) Use tax shall be paid on building and construction materials, as defined in Article V of this Chapter 4, directly to the Town prior to construction if such materials are delivered on site by the vendor unless other acceptable documentation is provided to the Town evidencing that a local use tax has been paid or is required to be paid.

Sec. 4-57. Schedule of sales tax.

- (1) There is hereby imposed on the sale of tangible personal property at retail or the furnishing of services where such personal property and services are taxable pursuant to Section 39-26-104, C.R.S., as amended, a tax equal to three percent (3%) of the gross receipts.
- (2) The collection, administration and enforcement of this sales tax shall be performed by the State Director of Revenue in the same manner as the collection, administration and enforcement of the State sales tax. The provisions of the Act and all rules and regulations promulgated by the Director of Revenue shall govern the collection, administration and enforcement of the sales tax imposed by this Article.
- (3) The imposition of the tax on individual sales shall be in accordance with schedules set forth in the rules and regulations of the Department of Revenue or by separate resolution of the Town.

Sec. 4-58. Unpaid tax a prior lien.

- (1) The taxes imposed by Section 4-57 above shall be a first and prior lien upon the goods and business fixtures owned or used by any retailer required by the provisions of this Article to submit a return and make payment of the taxes collected, except the stock of goods held for sale in the ordinary course of business, until said taxes are paid in full.
- (2) The lien created by Subsection (1) above shall be construed to be a lien and encumbrance upon the specific items of personal property therein enumerated, shall take precedence over all other liens, encumbrances or claims of whatsoever nature and shall immediately attach to such items without the necessity of the filing of any notice of lien thereof.

Sec. 4-59. Sales tax credit.

Notwithstanding any other provision of this Article, and in order to implement the provisions of the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza, dated as of the Effective Date thereof (as amended or supplemented from time to time, the "Agreement"), by and among the Town of Johnstown, Johnstown Plaza, LLC and the Johnstown Plaza Metropolitan District, there shall be granted to each person or entity obligated to pay, collect or remit sales tax on the sale of tangible personal property at retail or the furnishing of services, which are subject to Town sales tax occurring within the PIF Property, as defined in the PIF Covenant, and incorporated herein by this reference, a tax credit against collection of the sales tax as hereinafter set forth. Such sales tax credit shall be granted in form of a reduction in the applicable sales tax rate in an amount equivalent to two percent (2%), the rate of the Credit PIF, and shall attach to a particular transaction only to the extent that the Credit PIF Revenues are received by the PIF Collecting Agent for such transaction. The sales tax credit shall be automatic and shall take effect immediately upon the occurrence of a Taxable Transaction within the PIF Property, but shall be subject to the applicable retailer's remittance to and receipt by the PIF Collecting Agent of the Credit PIF Revenues in accordance with the PIF Covenant and the Agreement. The sales tax credit shall be granted during the Credit PIF Period and shall automatically terminate when the Credit PIF Period terminates. All capitalized terms used in this Section and not otherwise defined herein shall have the meanings set forth in the Agreement.

Secs. 4-60—4-70. Reserved.

ARTICLE V - Use Tax

Sec. 4-71. Definitions.

- (a) *Building materials* are those construction materials for which a Town Building Permit is required.
- (b) *Construction materials* are all other construction materials, including but not limited to tangible personal property, which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project, including public and private improvements. *Construction materials* include, but are not limited to, such things as: asphalt, bricks, builders' hardware caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, wood preserver, electrical conduit, cable, transformers, pipelines, utility line, railroad ties and rails, or other similar property, whether or not such property may lose its identity as personal property by being incorporated as part of the real property. The above materials, when used for forms or other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials. However, in no event shall the term *construction materials* include any tangible personal property stored, used or consumed by a person or entity subject to regulation by the Colorado Public Utilities Commission.

Sec. 4-72. Imposed.

There is imposed, and there shall be paid and collected, a use tax upon the privilege of using or consuming within the Town any construction and building materials, and motor and other vehicles on

which registration is required, purchased at retail, or both, such use tax to be in the amount of three percent (3%) of the retail cost thereof.

Sec. 4-73. Exemptions.

(a) In no event shall the use tax apply:

- (1) For the storage, use or consumption of any tangible property, the sale of which is subject to a retail sales tax imposed by the Town.
- (2) To the storage, use or consumption of any tangible personal property purchased for resale in the Town, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.
- (3) To the storage, use or consumption of tangible personal property brought into the Town by a nonresident thereof for his or her own storage, use or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into the Town by a nonresident to be used in the conduct of a business in this Town.
- (4) To the storage, use or consumption of tangible personal property by the United States Government or the State, or their institutions or political subdivisions, in their governmental capacities only, or by religious or charitable corporations in the conduct of their religious or charitable functions.
- (5) To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished, and the container, label or the furnished shipping case thereof.
- (6) To the storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a sale and use tax of another town, city or county equal to or in excess of the use tax. A credit shall be granted against the use tax with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him or her elsewhere. The amount of the credit shall be equal to the tax paid to him or her by reason of the imposition of a sales or use tax of another town, city or county on his or her purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax.
- (7) To the storage, use or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a nonresident acquiring residency.
- (8) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the Town; and he or she purchased the vehicle outside of the Town for use outside of the Town and actually so used it for a substantial and primary purpose for which it was acquired; and he or she registered, titled and licensed the motor vehicle outside of the Town.
- (9) To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of the use tax.
- (10) To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to the effective date of the use tax.

(11) To the storage of construction and building materials.

Sec. 4-74. Motor and other vehicle use tax collection.

The use tax shall be applicable for every motor or other vehicle for which registration is required by the laws of the State. No registration shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the State Department of Revenue or its authorized agents until any use tax due upon the use, storage or consumption thereof has been paid.

Sec. 4-75. – Building and construction materials use tax collection.

A portion of revenues collected under this Section shall be credited to the Capital Projects Fund.

Sec. 4-76. Collection, administration and enforcement.

- (a) The collection, administration and enforcement of the use tax shall be performed by the Town Treasurer. The Town Treasurer is authorized to adopt rules and regulations which may be necessary or appropriate for the collection, administration and enforcement of the use tax.
- (b) The use tax on building and construction material shall be due and payable to the Town at the time a building permit application is submitted, unless otherwise authorized by the Town.
- (c) The taxpayer may elect a hearing before Town Council with respect to the Town Treasurer's decision regarding a deficiency notice or claim for refund within thirty (30) days after the mailing of such decision.
- (d) Upon the exhaustion of local remedies, the taxpayer may request a hearing as provided by state law.

Sec. 4-77. Unpaid tax a prior lien.

- (a) The taxes imposed by Section 4-72 above shall be a first and prior lien upon the goods and business fixtures owned or used by any obligor required by the provisions of this Article to make payment of the taxes imposed until said taxes are paid in full.
- (b) The lien created by Subsection (a) above shall be construed to be a lien and encumbrance upon the specific items of personal property therein enumerated, shall take precedence over all other liens, encumbrances or claims of whatsoever nature and shall immediately attach to such items without the necessity of the filing of any notice of lien thereof.

Secs. 4-78—4-90. Reserved.

ARTICLE VI - Development Cost Reimbursement

Sec. 4-91. Cost agreement.

All development proposals, including, but not limited to, annexation, subdivision, zoning, rezoning, site plans and final development plans, shall require a cost agreement to be entered into between landowners or developers and the Town to provide for reimbursement to the Town for the cost of planning services, engineering services, legal services and consultants used by the Town to assist in evaluating landowners' or developers' requests and to assist the Town in negotiation, review, consultation and advice. Such agreement shall also reimburse the Town for other related costs, including but not limited to legal publication costs and administrative costs. The cost agreement shall require that the landowner or developer submit a deposit to the Town in the amount provided by resolution adopted by Town Council.

ARTICLE VII - Deferral of Development Fees

Sec. 4-92. Deferral of development fees.

The Town Manager, in his or her discretion, may defer fees imposed on new development in the Town when the deferral will serve a public purpose. A public purpose may include, without limitation, providing the public with social, economic, or cultural benefits. Unless otherwise authorized by the Town Council, the deferred fees shall be paid prior to the issuance of a certificate of occupancy and shall be imposed at the rate in effect at the time paid. In the event that any amounts owed are not paid when due, except as otherwise provided by the Town, such unpaid amounts shall be a perpetual lien upon the real property for which the deferred fees are owed from the date the fees are due until paid and such lien shall have priority over all other liens except those for real property taxes. Without limiting the Town's right to pursue all remedies available to it under the law to collect such unpaid fees, the Town Clerk or Town Treasurer may certify any delinquent fees and other amounts owed to the County Treasurer and such fees and amounts shall then be collected in the same manner as though they were real property taxes.

Secs. 4-93—4-100. Reserved.

ARTICLE VIII - Lodging Tax

Sec. 4-101. Purpose.

The purpose of this Article is to impose a lodging tax on every person who, for consideration, leases or rents a hotel room, motel room, lodging room, guesthouse room, recreational vehicle PAD or other similar accommodation located in the Town for a period of less than thirty (30) consecutive days, and to require that every person who furnishes any such lodging accommodation collect and remit to the Town the tax imposed herein.

Sec. 4-102. Definitions.

For purposes of this Article, the following words shall have the following meanings:

- (a) *Lodging accommodation* means hotel room, motel room, lodging room, motor hotel room, guesthouse room, recreational vehicle PAD or other similar accommodation located in the Town that is leased, rented or otherwise furnished to persons for a period of less than thirty (30) consecutive days.
- (b) *Lodging tax* or *tax* means an excise tax payable by a person for the purchase of a lodging accommodation and also means the aggregate amount of taxes due from a vendor during the period for which such vendor is required to collect and remit the tax imposed by this Article, as more fully described in Section 4-103 below.
- (c) *Taxpayer* means a person obligated to pay the tax under the terms of this Article.
- (d) *Vendor* means a person furnishing lodging accommodations for consideration within the Town.

Sec. 4-103. Tax levied.

- (a) *Lodging tax.* Effective April 1, 2016, there is levied and shall be paid and collected an excise tax of three percent (3%) on the compensation paid for the leasing, rental or furnishing of any lodging accommodation for a period of less than thirty (30) consecutive days. This tax shall be in addition to the sales tax established pursuant to Articles IV of this Chapter and any other lawfully imposed tax or fee.

(b) *Exemptions.* The following transactions shall be exempt from the tax:

- (1) Lodging accommodations provided to the United States Government, the State of Colorado, its departments and institutions, and political subdivisions thereof, including the Town, in their governmental capacities and in the conduct of their governmental functions and activities only;
- (2) Lodging accommodations provided to any person who the Town is prohibited from taxing under the Constitution or laws of the United States or the State of Colorado;
- (3) Lodging accommodations provided to religious, charitable and eleemosynary corporations in the conduct of their religious, charitable and eleemosynary functions and activities only; and
- (4) Lodging accommodations provided to any person for a period of at least thirty (30) consecutive days.

Sec. 4-104. – Certification of registration.

(a) Every vendor shall obtain a certificate of registration as a tax collector from the Town Treasurer no later than thirty (30) days after commencing such business.

(b) An application for certificate of registration shall be made to the Town Treasurer upon forms furnished by the Town. Each application shall be signed and verified by the applicant or a properly authorized agent of the applicant.

(c) Upon receipt of the application for a certificate of registration in proper form and approval by the Town Treasurer, a certificate of registration shall be issued. A certificate of registration shall not be issued to any person who is in default to the Town for moneys due under this Article or any other provision of this Code.

(d) A separate certificate of registration shall be required for each place of business in the Town.

(e) The certificate of registration shall be conspicuously displayed at each place of business.

(f) Information supplied on the application required by this Section shall be updated within thirty (30) days of any change or alteration thereof upon forms supplied by the Town.

Sec. 4-105. Liability for tax.

(a) No taxpayer leasing or renting a lodging accommodation shall fail to pay the lodging tax levied pursuant to Section 4-103.

(b) No vendor leasing, renting or otherwise furnishing lodging accommodations shall fail to collect and remit to the Town the lodging tax levied pursuant to Section 4-103. The burden of proving that any transaction is not subject to the tax imposed by this Article is upon the vendor.

Sec. 4-106. Collection; remittance of tax; audit.

(a) Every vendor providing lodging accommodations taxable under this Article shall add the lodging tax to the compensation paid for the lodging accommodation, showing the tax as a separate and distinct item on the final invoice, or equivalent thereof, and shall collect the lodging tax.

(b) The lodging taxes collected by the vendor shall be and remain public money and the property of the Town. Until remitted to the Town, the vendor shall account for the money separately and hold such money in trust for the sole use and benefit of the Town.

- (c) The vendor shall report the lodging taxes collected on forms prescribed by the Town and shall remit such taxes to the Town on or before the twentieth day of each month for the preceding month, unless the Town, in its discretion, agrees in writing to a longer reporting period.
- (d) Every vendor shall maintain, keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the Town in order to determine the amount of the lodging tax for which the vendor is liable under this Article. The vendor shall keep and preserve all such books, invoices and other records for a period of three (3) years, and the same shall be open for examination by the Town. Those records must include a daily sheet showing:
 - (1) The number of rooms rented during the preceding twenty-four (24) hour period, including multiple rentals of the same room where such occurred; and
 - (2) The actual hotel receipts collected for the period in question.
- (e) For the purpose of ascertaining the correct amount of the lodging tax due from a vendor under this Article, the Town or an authorized agent of the Town may conduct an audit by examining any relevant books, accounts and records of the vendor at the lodging accommodation.
- (f) No person shall prevent, hinder or interfere with the Town Treasurer or his or her duly authorized representative in the discharge of his duties under this Article. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Town Council may issue a subpoena to require that the taxpayer or its representative attend a hearing or produce any such books, accounts and records for examination.
- (g) Any tax-exempt organization claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in the lodging business in the Town.

Sec. 4-107. Disputes over exemption from tax; application for refund.

If a dispute arises between the taxpayer and vendor as to whether a lodging transaction is exempt from taxation, the taxpayer shall pay and the vendor shall collect the lodging tax, and the vendor shall issue to the taxpayer a receipt showing the name of the taxpayer and vendor, the lodging accommodation furnished, the date, the price for the lodging accommodation and the amount of lodging tax paid along with a brief statement of the claim of exemption. The taxpayer shall thereafter, within ten (10) days of payment of the lodging tax, be entitled to apply to the Town for a refund of such taxes. If an application is filed, the Town shall determine the question of exemption, subject to review as provided in Section 4-112.

Sec. 4-108. Disposition of funds.

The revenues derived from the lodging tax imposed by this Article shall be placed in the General Fund for expenditures for all lawful municipal purposes, including but not limited to police protection services, community and economic development services, community events and beautification projects.

Sec. 4-109. Duties and powers of Town Manager.

The administration of this Article is hereby vested in and shall be exercised by the Town Manager. The Town Manager is authorized to prescribe forms and rules and regulations for the proper administration and enforcement of the provisions hereof. The Town Manager may delegate the administration of this Article, or any part of it, subject to the limitations of this Code, to duly qualified employees and agents of the Town.

Sec. 4-110. Tax information confidential.

- (a) All specific information gained under the provisions of this Article used to determine the lodging tax collected and remitted to the Town, whether furnished by a taxpayer or a vendor or obtained through an audit, shall be treated by the Town and its officers, employees and legal representatives as confidential.
- (b) Except as directed by judicial order or otherwise provided by law, the Town, its officers, employees or legal representatives shall not divulge any confidential information obtained under the provisions of this Article. If directed by judicial order, the officials charged with the custody of such information shall be required to provide only such information as is directly ordered.
- (c) Nothing contained in this Section shall be construed to prohibit the delivery to the vendor, or to such vendor's authorized representative, of a copy of confidential information relating to such vendor, or to prevent the inspection of such confidential information by an authorized officer, employee, agent or legal representative of the Town.
- (d) Nothing contained in this Section shall be construed to prohibit the publication of statistics relating to the lodging tax if the statistics are classified to prevent the identification of particular reports or returns.
- (e) Notwithstanding the provisions of this Section, the Town may furnish to the taxing officials of the State or its political subdivisions, and other state or its subdivisions of the United States, any confidential information, provided that such jurisdiction enters into an agreement with the Town to grant reciprocal privileges to the Town and such information is to be used by the jurisdiction only for tax-related purposes.

Sec. 4-111. Penalties; assessment.

- (a) *Penalty.* A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.00), whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the twentieth day of the month as required by this Article, or such other date as prescribed by the Town, and one and one-half percent (1.5%) interest shall accrue each month on the unpaid balance.
- (b) *Penalty due to fraud.* If the Town Manager determines that the tax is not paid due to fraud with the intent to evade the tax, then, in lieu of the penalty set forth in Subsection (a), the Town Manager shall add fifty percent (50%) of the total amount of the tax due and one and one-half percent (1.5%) interest each month on the unpaid balance.
- (c) *Assessment.* If any vendor fails to remit the tax imposed by this Article, the Town Manager may make an estimate, based upon available information, of the amount of tax due and add the penalty and interest provided above. Such estimate shall thereupon become an assessment, and such assessment shall be final, due and payable.
- (d) *Notice.* The Town Manager shall mail notice of the amount of lodging tax due, together with penalties and interest, pursuant to the foregoing subsections, by certified mail to the vendor at the address indicated in the Town's records, and such amount shall be due and payable from the vendor to the Town within ten (10) days from the date of service of the notice or the date of mailing by certified mail; provided, however, that, within the ten (10) day period, the vendor may petition the Town for a revision or modification of the amount due as provided in Section 4-112 below.
- (e) *Waiver.* The Town Manager is hereby authorized to waive, for good cause shown, any penalty assessed pursuant to this Section.

Sec. 4-112. Administrative review; appeals.

- (a) *Petition.* A taxpayer or vendor who disputes the amount of the lodging tax due or who disputes any determination made by or on behalf of the Town pursuant to and by the authority of this Article may, within ten (10) days of such assessment or determination, petition for a hearing on a revision or modification of such assessment or such determination. The petition shall be in writing, filed with the Town Clerk and contain facts and figures in support of the position alleged therein. The petition shall be submitted under oath in writing or orally at the duly scheduled hearing. Only one petition in connection with a particular assessment or determination may be filed, except upon a showing of changed circumstances sufficient to justify the filing of an additional petition.
- (b) *Hearing.* The Town Manager may hold a hearing on the petition or may designate another person as a hearing officer with authority to hold such hearing. The hearing shall be held within a reasonable time after the filing of a petition at the Town Hall or other place as designated by the hearing officer, and notice thereof and the proceedings shall otherwise be in accordance with the rules and regulations issued by the Town. The petitioner shall have the burden of proof.
- (c) *Order.* Within thirty (30) days of a hearing, the hearing officer shall make written findings of fact and conclusions based upon all relevant information contained in the petition and presented at the hearing. The hearing officer's determination shall be considered a final order of the hearing officer, which may, within thirty (30) days of its issuance, be appealed to the Town Council.
- (d) *Appeal to Town Council.* An appeal to the Town Council shall be in writing, filed with the Town Clerk and allege with particularity the errors and omissions contained in the final order. The appellant shall, at that time of making such appeal, pay to the Town Treasurer a docket fee in the amount provided by resolution adopted by Town Council. Written notice of the hearing shall be given to all parties concerned at least seven (7) days prior to the hearing. The appellant shall have the burden of proof on appeal. Within thirty (30) days of the hearing, the Town Council shall make its final determination and affirm, modify or reverse the final order. Such assessment shall be considered the final order of the Town and may be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Town of such intention within ten (10) days after receipt of the final order.
- (e) *Service.* Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this Article.

Sec. 4-113. Liens.

The lodging tax imposed by this Article, together with penalties and interest, shall be and, until paid, shall remain, a first and prior lien on tangible personal property in which the vendor responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of a notice of lien. Such lien may be certified and recorded as a charge against such tangible personal property and collected, along with costs of such collection, as provided by law.

Sec. 4-114. Recovery of unpaid taxes by action at law.

The Town Manager may treat due and unpaid lodging taxes, together with penalties and interest, as a debt owed to the Town and recover such debt in an action at law. In such case, the Town may recover, in addition to the amounts due and unpaid, the reasonable attorney fees and collection costs incurred with respect thereto. The vendor's return on the prescribed forms or the Town Manager's assessment as herein provided, as the case may be, shall be prima facie proof of amount due.

Sec. 4-115. Status of unpaid taxes in bankruptcy and receivership.

Whenever the business or property of a vendor subject to this Article is placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all lodging taxes,

penalties and interest imposed by this Article, and for which the vendor is in any way liable under the terms of this Article, shall be a prior and preferred lien against all the property of the vendor, except as to other tax liens which have attached prior to the filing of the notice. No sheriff, receiver, assignee or other officer shall sell the property of any vendor subject to this Article under process or order of any court, without first ascertaining from the Town the amount of any lodging taxes due and payable under this Article and, if there are any such lodging taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the lodging taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as above provided.

Sec. 4-116. Statute of limitations.

- (a) The lodging taxes for any period imposed by this Article, together with penalties and interest, shall not be assessed, nor shall notice of lien be filed, suit for collection be instituted or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is due and payable. No lien shall continue after such period, except for taxes assessed before the expiration of such three-year period, a notice of lien with respect to which has been filed prior to the expiration of such period, and, in such cases, such lien shall continue only for one (1) year after the filing of notice thereof.
- (b) Notwithstanding the foregoing, in case of a false or fraudulent return with intent to evade taxation, the lodging tax, together with penalties and interest, may be assessed, or proceedings for the collection of such taxes may be commenced, at any time.
- (c) Before the expiration of such period of limitation, the taxpayer or vendor and the Town may agree in writing to an extension of the limitations period.

Sec. 4-117. Tax overpayments.

An application for refund of tax monies paid in error or by mistake shall be made within three (3) years after the date of payment for which the refund is claimed. If the Town determines that, within three (3) years of the due date, a vendor overpaid the lodging tax, the Town shall process a refund or allow a credit against a future remittance from the same vendor. The Town may extend the time for good cause.

Sec. 4-118. Violations.

- (a) It shall be unlawful for any taxpayer to fail or refuse to pay the lodging tax imposed by this Article, evade the payment of the lodging tax imposed by this Article or otherwise violate or fail to comply with any other provision of this Article.
- (b) It shall be unlawful for any vendor to refuse to make any return required by this Article, make any false or fraudulent return or any false statements in any return, fail or refuse to collect the lodging tax from a taxpayer, fail or refuse to remit any lodging taxes collected to the Town, evade the collection and remittance of the lodging taxes or otherwise violate or fail to comply with any other provision of this Article,
- (c) It shall be unlawful for any person to aid or abet another in an attempt to evade the payment of the lodging tax imposed by this Article.
- (d) Any person convicted of violating any of the provisions of this Article shall be punished as provided in Section 1-62 of the Code.

Secs. 4-119—4-130. Reserved.

Article IX Unclaimed Property

Sec. 4-131. Purpose.

The purpose of this Article is to provide for the administration and disposition of unclaimed property which is in the possession of or under the control of the Town.

Sec. 4-132. Definitions.

Unless otherwise required by context or use, words and terms shall be defined as follows:

Owner means a person or entity, including a corporation, partnership, association, governmental entity other than the Town, or a duly authorized legal representative or successor in interest of same, which owns unclaimed property in the possession of or under the control of the Town.

Unclaimed property means any tangible or intangible property, including any income or increment derived therefrom, less any lawful charges, in the possession of or under the control of the Town that has not been claimed by its owner for a period of more than two (2) years after it became payable or distributable.

Sec. 4-133. Procedure for disposition of unclaimed property.

- (a) Prior to disposition of any unclaimed property having an estimated value of fifty dollars (\$50.00) or more, the Town Clerk shall send a written notice by certified mail, return receipt requested, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address of the owner as shown by the records of the Town. The notice shall include a description of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that, if the owner fails to provide the Town Clerk with a written claim for the return of the property within sixty (60) days of the date of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.
- (b) Prior to disposition of (i) any unclaimed property having an estimated value of less than fifty dollars (\$50.00), (ii) unclaimed property wherein the Town Clerk does not have a last known address of the owner or (iii) unclaimed property wherein the Town Clerk does not know the identity of the owner, the Town Clerk shall cause a notice to be published in a newspaper of general circulation in the Town. The notice shall include a description of the property, the owner of the property, to the extent known, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that, if the owner fails to provide the Town Clerk with a written claim for the return of the property within sixty (60) days of the date of the publication of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.
- (c) If the Town Clerk does not receive a written claim within the above sixty (60) day claim period, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.
- (d) If the Town Clerk receives a written claim within the sixty (60) day claim period, the Town Clerk shall evaluate the claim and provide written notice to the claimant within ninety (90) days thereof that the claim has been accepted or denied in whole or in part. The Town Clerk may investigate the validity of a claim and may request further supporting documentation from the claimant prior to disbursing or refusing to disburse the property.

- (e) In the event that there is more than one (1) claimant for the same property, the Town Clerk may, in the Town Clerk's sole discretion, resolve said claims administratively by providing a written decision to the claimants or by depositing the disputed property with the registry of the District Court in an interpleader action.
- (f) In the event that all claims filed are denied, the Town Clerk shall provide written notification to the claimant(s). The property shall thereafter become the sole property of the Town and any claim of the owner of such property shall be deemed forfeited.
- (g) Any legal action filed challenging a decision of the Town Clerk shall be filed pursuant to Rule 106 of the Colorado Rules of Civil Procedure within thirty (30) days of the date the Town Clerk delivers the written decision to the claimant(s) by placing the decision in the U.S. Mail, postage prepaid, or by hand delivery or shall be forever barred. If a legal action is timely filed, the property shall be disbursed by the Town Clerk pursuant to the order of the Court having jurisdiction over such claim.
- (h) The Town Clerk is authorized to establish and administer procedures for the administration and disposition of unclaimed property consistent with this Article, including compliance requirements for other Town officers and employees in the identification and disposition of such property.

Section 2. Revisions. Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

Section 3. Repeal. Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 4. Publication; Effective Date; Recording. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective on January 1, 2020, subsequent to final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2019.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the
Town Council of the Town of Johnstown, Colorado, this _____ day of _____,
2019.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

AGENDA ITEM 10D

Public Hearing

**Consider Oil and Gas Operator
Agreement and Encroachment
License**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: December 2, 2019

ITEM NUMBER: 10D

SUBJECT: Public Hearing: An Oil and Gas Operator Agreement and Encroachment License Between the Town of Johnstown and Kerr-McGee Oil & Gas Onshore LP.

ACTION PROPOSED: Consideration and Approval of the Oil and Gas Operator Agreement and Encroachment License

ATTACHMENTS: 1. Oil and Gas Operator Agreement and Encroachment License with Exhibits

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Enclosed for your review and consideration is an Oil and Gas Operator Agreement and Encroachment License between the Town of Johnstown and Kerr-McGee. The document presented to you for consideration this evening is a result of extensive negotiations to permit Kerr-McGee to establish well sites at 3 locations within the Town's corporate limits. This agreement does not provide for or guarantee future approvals for sites, only these three locations. This agreement will supplant Section 17-200 of the Johnstown Municipal Code related to a Special Use Permit and allow for final administrative approval. The applicant, as part of the agreement presented, shall comply with all other terms and conditions of Chapter 17, Article XI – Oil and Gas Exploration and Production which must be approved administratively by the Town Manager.

In preparation for this agenda item, the applicant conducted a neighborhood meeting for all three sites, providing notification to all property owners within 1000 feet of the site (over 300 notifications were sent). This neighborhood meeting was conducted on October 2, 2019 from 5-7 pm at the Town's Senior/Community Center. Both representatives from Kerr-McGee and the Town attended. We used this publicly held meeting as a barometer to determine if the ability to consider these applications as administrative based on attendance and feedback from the community. Generally, those that did attend were not in opposition to the applicants' plans for the three sites and no major concerns were raised during the neighborhood meeting.

In addition, the Town published noticed of this matter in the *Johnstown Breeze* and set the matter as a public hearing in order to provide the public with additional opportunity to comment on the proposed project.

The agreement to be considered this evening provides benefits for both parties. The benefits afforded to the applicant in the Operator Agreement and Encroachment License include the following:

- Given the recent difficulty in permitting of sites by the COGCC, a letter will be provided to the COGCC from the Town outlining that the site applications have been approved by the Town in compliance with our land use procedures and in compliance with this agreement.
- The agreement will also provide a license for the operator to enter the Town's property to construct and maintain their improvements and provide the operator with a right construct 5 additional crossings under Town Right-of-way subject to subsequent approval and permitting by the Town.
- The applicant as previously stated would receive the permits for the sites administratively, assuming that they comply with the terms of the Johnstown Municipal code related to Chapter 17, Article XI which includes, but is not limited to approval of a site plan and application for a building permit.
- The total number of wells that can be permitted among the 3 sites totals 70. There is no specificity to the number of wells per site as this does provide flexibility for the applicant based on the minerals available at each location.
- The agreement contains best management practices in Exhibit D, requiring the operator to maintain certain minimum standards regarding, among others, noise, odor, lighting and road repairs, and contains specifications for access roads and mud tracking in Exhibit E.

The Town as part of this agreement also stands to receive considerable benefits as well. These benefits include the following:

- The Town will receive the necessary right of way that it needs from the property owned by Kerr-McGee and its affiliates as part of this agreement. The right of ways will include portions necessary for the CDOT I-25 expansion project along the Highway 60 and I-25 Segment 6, ½ of the right of way necessary for the High Plains Boulevard, and right of way that is necessary for the ultimate sections for Parish Avenue south of Town, and along WCR 44 based on the Town's 2008 Transportation Plan.
- One of the properties owned by the applicant and a planned drilling site as part of this agreement is the ¼ section of property at the southeast corner of Highway 60 and I-25. This is a key parcel that serves as a gateway for the Town. If this agreement is approved, the applicants shall dedicate to the Town approximately 50 acres (see Exhibit A-1 of agreement) within 24 months from the effective date of this agreement or 30 days after all the wells at the site being drilled, whichever is earlier. The property to be donated is the area of the ¼ section that is adjacent to Highway 60 and will enable the Town to strategically enhance the gateway of Highway 60 and I-25 on the southeast corner of the interchange.
- The applicant will permit for the establishment of an Urban Renewal Authority Area upon the respective properties owned by the applicant, if desired by the Town. While the Town does not currently have an Urban Renewal Authority, this does provide flexibility in the case the Town desires to create one and embark on a project that might include transportation, sewer/water infrastructure, and other public improvements.

We are in a time when the State Legislature believes that they know what is best for all of Colorado's communities, with little regard with the simple fact that each community is different. A direct illustration of this was the enactment of SB 181 this year. The agreement presented ensures those elements of local control are preserved and when the terms and conditions of the Town's Municipal Code related to Chapter 17, Article XI are met encourages the COGCC to issue a permit, rather than delaying the permit issuance without merit. Staff believes this is a win-win approach for both parties in this agreement and finds a balance that might be used as a template for others in the region who have value in the Oil & Gas industry within their community. In fact, I have been contacted by several other communities about this agreement for consideration of use in their respective community.

LEGAL ADVICE:

The agreement was drafted and reviewed by the Town Attorney.

FINANCIAL ADVICE:

Not Applicable

RECOMMENDED ACTION: Approve the agreement as presented.

SUGGESTED MOTIONS: FOR THE SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT

For Approval:

I move to approve the Oil and Gas Operator Agreement and Encroachment License Between the Town of Johnstown and Kerr-McGee Oil & Gas Onshore LP as presented, and direct the Town Attorney to prepare a resolution of approval.

For Denial:

I move that we deny Oil and Gas Operator Agreement and Encroachment License Between the Town of Johnstown and Kerr-McGee Oil & Gas Onshore LP as presented.

Reviewed and Approved for Presentation:

Town Manager

OIL AND GAS OPERATOR AGREEMENT AND ENCROACHMENT LICENSE

THIS OIL AND GAS OPERATOR AGREEMENT AND ENCROACHMENT LICENSE (“Agreement”) is made and entered into this ___ day of December, 2019 (“Effective Date”), by and between the Town of Johnstown, a home rule municipal corporation of the State of Colorado (“Town”), and Kerr-McGee Oil & Gas Onshore LP (“Operator”), a Delaware limited partnership (“Operator” or “Licensee”) (singularly “Party” and collectively the “Parties).

RECITALS

A. Operator engages in the exploration, development, production and marketing of natural gas, oil and natural gas liquids in the Town;

B. Operator owns property or has mineral right interests on property in the Town, as shown on Exhibit A attached hereto and incorporated herein by reference (“Property”); and

B. Operator seeks to locate three new well pads on the Property, identified as the Shake and Bake, Point Three and Oakwood, and as shown on Exhibit B attached hereto and incorporated herein by reference (“Well Pads”);

C. In connection with the construction and future operation of the Well Pads and Subject Wells (defined below), Operator further seeks to install and maintain separate multi-line pipelines and related below-ground facilities and appurtenances, including but not limited to, conduit(s) for the transmission of communication signals, valves, valve fitting, metering equipment, corrosion control devices, wires, cables, pipeline markers, electrical lines and other appearances as may be reasonably or convenient for the gathering or transportation of oil, gas, water and other substances, combinations or mixtures of any of the forgoing in the Town (each an “Improvement” and collectively, the “Improvements”);

E. The Town is the owner of certain right-of-way and/or real property situate in the County of Weld and County of Larimer and State of Colorado (“Town’s Property”);

F. Portions of the Improvements used in connection with the Well Pads and Subject Wells will encroach under, over, through and on the Town’s Property (each an “Encroachment” and collectively, the “Encroachments”), as shown and described on the attached Exhibit C, which is incorporated herein by reference;

G. The Parties value a balanced approach to oil and gas development that protects human health, safety and welfare, as well as the environment and wildlife, and that mitigates any adverse impacts from such development; and

I. The Parties desire to enter into this Agreement to set forth their understanding with respect to the drilling, completing, equipping, operations and maintenance of the Well Pads and Subject Wells to be drilled thereon and to grant to Operator a personal privilege to construct the

Improvements and maintain the Encroachments described above under, over, through and on the Town's Property.

AGREEMENT

NOW THEREFORE, in consideration of the covenants and mutual promises set forth in this Agreement, the Parties agree as follows:

ARTICLE I. GENERAL PROVISIONS

1. Recitals. The Recitals are incorporated as if fully set forth herein.
2. Effective Date. This Agreement shall be effective as of the Effective Date.
3. Term. The term of this Agreement shall be as follows:
 - a. Term of Right to Locate Well Pads and Drill Wells. The right to locate Well Pads and drill the Subject Wells pursuant to this Agreement shall commence upon the Effective Date and remain in effect for five (5) years, and so long thereafter as Operator or its authorized successor(s) has operations or owns or operates a Subject Well within the Well Pads or unless otherwise terminated as set forth herein. In the event this Agreement expires or is otherwise terminated pursuant to the terms hereof, such expiration or termination shall not prevent any operations and/or development of the Well Pads and Subject Well(s) that were previously permitted and authorized pursuant to the terms of this Agreement or otherwise approved by the Town prior to the expiration of termination of this Agreement. Additionally, in the event this Agreement is terminated, no re-permitting of the existing Subject Wells shall be required solely as a result of the termination of this Agreement.
 - b. Term of License. The License for the Encroachments granted in favor of the Operator in Article III of this Agreement shall commence upon the Effective Date and may terminate as provided for in Article IV of this Agreement.
 - c. Material Term of Agreement. The Town recognizes and agrees that approval of the Subject Wells through the administrative process set forth in Article II is the basis for the consideration paid by Operator in Article I, Section 4, and is a material term of this Agreement. A failure to approve the Subject Wells as provided in this Agreement shall constitute a material default by the Town hereunder for which Operator shall be entitled to pursue all legal and equitable remedies, including but not limited to an action for specific performance.
4. Consideration.

The following consideration shall be paid by Operator to the Town for the License (as defined below) and privilege granted by this Agreement, the sufficiency of which is acknowledged by Operator and the Town:

a. Within thirty (30) days after all the Shake and Bake Wells have been drilled and completed or twenty four (24) months from the Effective Date of this Agreement, whichever is earlier, Operator shall convey the surface of that certain property as generally shown and described on Exhibit A-1, consisting of 48.96 acres, more or less, to the Town in the form of special warranty deed at no cost to the Town ("Dedicated Property");

b. Within 90 days after the execution of this Agreement, the Operator shall provide for the following rights-of-way (collectively, the "Rights-of-Way"):

i. With respect to Shake and Bake, seventy (70) feet of right-of-way on the eastern boundary of the property and the amount of right-of-way necessary on the north- western boundary of the property that is included in the portion of the land to eventually be donated to the Town, to allow for the U.S. Interstate 25 corridor improvements; and

ii. With respect to Point Three, thirty (30) feet of right-of-way on the western boundary of the property and fifteen (15) feet of right-of-way along the portion of the property that is adjacent to Weld County Road 44.

iii. The rights-of-way described herein, are depicted on Exhibit F-1 and Exhibit F-2 and an approximation of the right of way dedication for the north-western boundary of the Shake and Bake property is depicted on Exhibit G, attached hereto and incorporated herein by reference.

iv. With respect to the existing 8 inch pipeline on the south edge of the Point Three property along Weld County Road 44, the Town agrees that any improvements caused to be constructed by the Town on or over property above such pipeline, which require the pipeline to be re-located (at Operators sole and reasonable discretion), the Town shall pay all reasonably necessary costs and expenses to relocate the 8 inch pipeline. The cost to relocate any other Improvements shall be borne by the Operator as provided in Article IV, Section 4.

c. Other good and valuable consideration as herein provided.

ARTICLE II. OPERATION OF WELL PADS AND WELLS

1. Exercise of Local Land Use Authority. The Parties recognize and agree that the Town has enacted land use regulations pursuant to, among others, the Local Government Land Use Enabling Act, Colo. Rev. Stat. § 31-15-401 et seq., and the Land Planning Act, Colo. Rev. Stat. § 29-20-101 et seq., which authorize local governments to enact land use regulations that

regulate, *inter alia*, oil and gas development. The Parties further recognize and agree that the Town has enacted rules and regulations with respect to oil and gas exploration and production that are set forth in the Johnstown Municipal Code ("Code"), including, but not limited to, Article XI of Chapter 17 of the Code. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Code.

2. Drilling Plan. Pursuant to the terms of this Agreement, Operator may drill up to a total of 70 wells collectively on the Well Pads located on the Property ("Subject Well(s)").

3. Special Use Permit. Consistent with the Johnstown Municipal Code ("Code"), for each Subject Well, and subject to the allowance for administrative approval by the Town Manager set forth in Section 4 of this Article II, Operator agrees to obtain a special use permit in accordance with the requirements and procedures outlined in the Code including, among other applicable provisions, Article XI of Chapter 17 of the Code, as amended from time to time, and agrees to submit an application containing the elements prescribed by Section 17-199 of the Code, as amended from time to time. The Operator agrees not to move any heavy equipment or begin construction at a Well Pad based on Colorado Oil and Gas Conservation Commission ("COGCC") approval until the Operator has received administrative approval by the Town for the particular Well Pad.

4. Town Administrative Approvals. The Operator shall not be required to obtain from the Town Council or the Planning and Zoning Commission special use permit approvals for any of the Subject Wells subject to the terms and conditions of this Agreement, as long as the Operator complies with the terms and conditions contained herein. In order to receive administrative approval for the Subject Wells, the Operator shall file a special use permit with the Town Manager for one or more of the Subject Wells. The Town Manager shall review the special use permit and, provided it complies with the terms of this Agreement and satisfies the special use permit requirements, the Town Manager shall administratively approve the permit and shall not refer the special use permit to the Town Council. Such approval shall not be unreasonably withheld or conditioned and shall be rendered within thirty (30) business days of complete submittals by Operator to the Town Manager. If the Town Manager determines that the Operator is not in compliance with the terms of this Agreement the Town Manager, in the Town Manager's reasonable discretion, shall set a public hearing before Town Council regarding the application for a special use permit. The public hearing shall be set at the earliest possible time after public notice is provided. If the Town Manager denies the special use permit or imposes conditions upon the issuance of the permit that are not agreeable to Operator, Operator, in Operator's discretion, may appeal the Town Manager's decision to Town Council.

5. Water. If Operator desires to use Town water for the drilling and completion of the Subject Wells, the Town agrees to provide the water, if available, at a cost of \$9.00 per 1,000 gallons. If Operator intends to acquire water from the Town for such purposes, it must submit its request to the Town not less than three months prior to the anticipated use and the use shall remain subject to availability.

6. Compliance with COGCC. Pursuant to the Colorado Oil and Gas Conservation Act, Colo. Rev. Stat. § 34-60-101 et seq. (the "Act"), the Colorado Oil and Gas Conservation Commission (the "COGCC") regulates the development and production of oil and gas resources in Colorado, and the Act authorizes the COGCC to adopt statewide rules and regulations. The Operator agrees to drill, complete, equip, operate and maintain the Well Pads and the Subject Wells in accordance with the rules and regulations adopted by COGCC.

7. Best Management Practices. As a supplement to the COGCC's rules, regulations and procedures, Operator agrees to follow the best management practices, which are attached hereto and incorporated herein by reference as Exhibit D ("BMPs"). The BMPs include, but are not limited to, best practices for odor mitigation, noise mitigation, lighting installation, road maintenance and landscape restoration and resolution of complaints (determined to be reasonable and valid by Operator and Town). The Operator agrees to drill, complete, equip, operate and maintain the Well Pads and the Subject Wells in accordance with the BMPs.

8. Submission to COGCC. If the Operator is in compliance with this Agreement, the COGCC's rules, regulations and procedures, and the BMPs, the Town agrees not to object to the Operator's submissions to the COGCC relating to the Well Pads and/or the Subject Wells. Furthermore, upon Town approval of operations pertaining to a Subject Well and written request from the Operator, the Town Manager will promptly notify the COGCC in writing that the Town has approved such operations under its land use review procedures and pursuant to this Agreement.

9. Future Regulations. The Town reserves the right in the future to enact and apply prospectively regulations that are general in nature and that are applicable to all commercial and industrial operations in the Town, provided, however, that the application of such prospective regulations does not materially impede Operator's operations generally authorized by this Agreement.

ARTICLE III. ENCROACHMENT LICENSE FOR IMPROVEMENTS

1. Grant of Encroachment License. The Town hereby grants to Operator the personal privilege and permission to enter upon the Town's Property and to construct the Improvements and maintain the Encroachment under, over, through and on the Town's Property subject to the terms, conditions and limitations of this Agreement (the "License"), as depicted on Exhibit C. The Operator is not limited to the approximate locations shown on Exhibit C; and may revise these approximate locations based upon reasonable commercial factors that require the revision of these locations by Operator. Further, Operator shall be entitled to an additional 5 crossings under the terms of this agreement ("Additional Crossings"), *provided, however*, these Additional Crossings shall be at locations reasonably acceptable to the Parties, but such approval of the Additional Crossing shall not be unreasonably denied, conditioned, or withheld by the Town. No additional consideration shall be owed under this Agreement for the Additional Crossings except for those administrative and permit fees in effect on the date that the permit issues for each Additional Crossing. The License and any additional license for the Additional Crossings herein granted shall be subject to all existing utility easements, if any, located on or under the Town's Property.

2. No Interest in Land. Operator understands, acknowledges and agrees that neither the License nor this Agreement create an interest or estate in Operator's favor in the Town's Property. The Town retains legal possession of the full boundaries of Town's Property and the License and this Agreement merely grant to the Operator the personal privilege to maintain the Encroachment described above throughout the term of this Agreement. Notwithstanding the expenditure of time, money or labor by the Operator on the Encroachments and the Improvements, the License and this Agreement shall in no event be construed to create an assignment coupled with an interest in favor of the Operator. Operator shall expend any time, money or labor at Operator's own risk and peril.

3. Limited Scope of License. The License granted to the Operator is limited in scope to the following permitted use or uses: pipeline crossing and other appurtenances as may reasonably be necessary or convenient for the Improvements for the gathering or transportation of oil, gas, water, and any other substances, combinations or mixtures of any of the foregoing, as shown on Exhibit C. Operator shall not have the right to expand the License, the Encroachments, Improvements or Operator's use of the Town's Property or to alter or change the Operator's use of the Town's Property.

4. Record Drawings. No more than sixty (60) days after construction of the Improvements, Operator shall provide to the Town detailed Digital Record Drawings in conformance with the Town's standards and specifications for Town review and acceptance. The delivered data should be in a Town approved projection to incorporate into the Town's Geographic Information System. No data of the underground utilities shall be made public in the interest of health and public safety.

5. Improvement Monumentation. During construction, at all locations where the Improvements enter or exit the Town's Property, permanent at and above grade monumentation and marking shall be placed in a manner and at a location approved by the Town. Operator shall maintain all monumentation and marking for as long as this License is in effect.

6. Permit and Improvement Mapping. Prior to constructing the Improvements subject to the License, Operator shall obtain a Town-issued a Right-of-Way or Public Improvement Permit for the construction of the Improvements at no further cost to the Operator beyond administrative and permit fees in effect as of the date of this Agreement. As part of the application, Operator shall provide detailed maps of the Improvement(s) for the entirety of the corresponding project within Town limits, regardless of whether it is located on the Town's Property.

7. Use of Licensed Premises by Others. Operator may permit Operator's employees, business invitees, contractors, tenants, subcontractors, lessees, agents, customers and others to use the portion of the Town's Property for which the License and this Agreement has been executed. Such use by others of the Town's Property or the Operator's Improvements located on the Town's Property shall not in any manner increase, decrease, modify, amend or otherwise affect the rights and obligations of the Operator under the Agreement.

8. Permanent Removal of Encroachment upon Termination. At such time as this Agreement is terminated pursuant to terms hereof and/or the License herein granted to Owner is terminated under Article IV, Section 2, or the Improvements, or any of them, are abandoned, Operator shall remove, at Operator's sole expense, any and all Improvements within the Encroachments owned or maintained by Operator on the Town's Property.

9. Maintenance of the Improvements. During the term of this Agreement, the Operator shall, at Operator's sole expense, maintain the Improvements which encroach onto the Town's Property in safe and good condition as reasonably determined by the Town.

10. Access Roads and Mud Tracking. Operator shall comply with specifications for Access Roads and Mud Tracking contained in Exhibit E. Operator shall also comply with the generally accepted best practices for erosion and sedimentation control.

11. Operator's Waiver of Claims against Town. As a part of the consideration paid by Operator for the License and this Agreement, and except for the negligence, recklessness or willful and wanton misconduct of the Town, its officers, employees, or agents, Operator hereby waives any and all claims which Operator may or might hereafter have or acquire against Town for loss or damage to Operator's Improvements which encroach onto the Town's Property arising from the use by the Town, or the public, of the Town's Property for any purpose.

12. Mechanics' Liens. Operator shall not allow any mechanics' or similar liens to be filed against the Town's Property arising from any work done by Operator on the Town's Property, and Operator shall indemnify and hold the Town harmless with respect thereto, including any attorney fees incurred by Town in connection with any such lien or claim. If any mechanics' or other liens shall be created or filed against the Town's Property by reason of labor performed by, or materials furnished for, the Operator, the Operator shall, within thirty (30) days thereafter, at the Operator's own cost and expense, cause such lien or liens to be satisfied and discharged of record together with any Notices of Intention to File Mechanic's Lien that may have been filed. Failure to do so shall constitute a default hereunder for which the Town may terminate this Agreement in accordance with the provisions of Article IV Sections 1 and 2 of this Agreement.

ARTICLE IV. DEFAULT, TERMINATION OF LICENSE AND ABANDONMENT

1. Default. In the event either Party defaults in the performance of any of the material covenants or agreements to be kept, done or performed by it under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of the nature of such default. Within thirty (30) days following receipt of such notice, the defaulting Party shall correct such default; or, in the event of a default not capable of being corrected within thirty (30) days, the defaulting party shall commence correcting the default within thirty (30) days of receipt of notification thereof and thereafter correct the default with due diligence. If the defaulting Party fails to correct the default as provided hereinabove, the non-defaulting party, without further notice, shall have the right to declare that this Agreement and the License terminated pursuant to Article IV Section 2 below upon such date as the non-defaulting Party shall designate. The rights and remedies provided for herein may be exercised singly or in combination.

2. Termination of License. The License herein granted to Operator is non-revocable, subject to termination only for the following:

a. Termination upon Non-Use or Removal/Abandonment of Improvements. In the event that Operator's Improvements which encroach onto the Town's Property are no longer useful to Operator, in Operator's reasonable judgment, or are permanently removed and/or abandoned by Operator (including the permanent removal and/or abandonment of any relocated Improvements pursuant to Article IV, Section 4), the License herein granted to Operator may be terminated by Town upon not less than thirty (30) days' advance written notice to Operator.

b. Termination upon Default. This License may be terminated by either Party upon the material default of the other Party in the performance of the material covenants or agreements of this Agreement in accordance with the provisions of Article IV, Section 1 of this Agreement.

c. Recording of Notice of Termination. Upon termination of the License and this Agreement the Town may cause to be recorded with the Clerk and Recorder of Larimer and Weld Counties, Colorado a written Notice of Termination.

d. No Compensation to Operator. In the event of termination of the License pursuant to this Agreement, Operator shall not be compensated for any Improvements that must be removed from the Town's Property.

3. Abandonment. If all of the wells connected to any Improvements are plugged and abandoned or are no longer capable of producing oil and gas that is not the result of *force majeure*, then the Town may send written notice to Licensee that it believes such Improvements are abandoned. If Licensee responds with competent evidence that the wells are not abandoned, then the Improvements shall not be deemed abandoned. If Licensee fails to respond to the Town within 60 days of receipt of such notice, such Improvements shall be deemed abandoned. If Licensee abandons any Improvements in place, they shall be abandoned in compliance with COGCC Rule 1105 or any amendment thereto. At Licensee's own expense, it shall hire a consultant to determine whether Licensee has complied with COGCC Rule 1105, when applicable, and provide a copy of such determination to the Town. In addition, Licensee may abandon any or all of the Improvements on the Town's Property by delivering written notice of its intent to abandon such Improvements to the Town.

4. Relocation. The Town shall consult with the Licensee and minimize to the extent practicable the need to relocate any Improvements. If the Town determines that Licensee must relocate the Improvements for a Public Project, Licensee shall, after conferring with the Town: (1) relocate such Improvements at Licensee's sole expense, within 180 days of written notice from the Town, or if such relocation site is not available or is not capable of a safe installation and operation of such relocated Improvements, to an alternative relocation site provided by the Town that is adjacent and in close proximity to the original site of such Improvements; (2) with the Town's approval, which shall not be unreasonably withheld, conditioned or delayed, abandon the

Improvements as provided in Article IV, Section 3, above; or (3) with the Town's approval, take other steps to accommodate the Public Project. If the Improvements are abandoned pursuant to this subsection, the Licensee may request that the Town allow the Licensee to replace them with hydrocarbon storage tanks. Placement of the hydrocarbon storage tanks shall only be permitted upon approval of Town Council and shall be subject to the Town's right to participate in the COGCC's review of such tanks. For purposes of this Agreement, "Public Project" means: (i) any public work or improvement within the Town that is wholly owned by the Town or (ii) any public work or improvement within the Town where at least 50% or more of the funding is provided by any combination of the Town, the federal government, the state of Colorado, any Colorado county and/or entities established under Title 32 of the Colorado Revised Statutes.

ARTICLE V. MISCELLANEOUS

1. Urban Renewal Authority. Upon request of the Town, Operator shall permit, and, if an eligible elector, sign a petition for, the establishment of an urban renewal authority pursuant to C.R.S. § 31-25-101, *et seq.*, wherein the Property may be included in an urban renewal project area.

2. Assignment. Neither the Agreement nor the License granted to Operator herein is transferable or assignable by Operator without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Operator may assign this Agreement in whole or part to Kerr-McGee Gas Gathering LLC ("KMGG") without the Town's consent. Such consent, if granted by the Town, shall be conditioned upon the transferee's or assignee's assumption without further consideration by the Town, in writing in a form reasonably acceptable to Town, of all of Operator's obligations hereunder. Such transferee or assignee shall acquire nothing more than the rights set forth herein and/or the personal privilege herein granted to Operator. The rights of any transferee or assignee shall be subject to termination in accordance with the provisions of this Agreement.

3. Insurance. During the term of the Agreement, Operator shall comply with the following insurance requirements. Operator shall maintain or cause to be maintained, with insurers authorized by the state of Colorado and at a minimum, the following types of insurance with limits no less than the amounts indicated:

A. Commercial General Liability insurance, with limits of no less than one million dollars (\$1,000,000.00) per claim/occurrence, two million dollars (\$2,000,000) General aggregate. Coverage shall be at least as broad as that provided by ISO CG 0001 01/96 or its equivalent, and shall include coverage for explosion, collapse, and underground hazards. Product/Completed Operations, with limits of no less than one million dollars (\$1,000,000.00) per claim/occurrence and two million dollars (\$2,000,000) aggregate. Such Commercial General Liability and Product/Completed Operations insurance shall include the Town, its officers, officials and employees as additional insureds per, respectively, ISO CG 2026 or its equivalent and ISO CG2037 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the Town, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

B. Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) combined single limit with respect to each of Operator's owned, hired and non-owned vehicles assigned to or used by the Operator in the Town.

C. Workers' Compensation insurance - Statutory Workers' Compensation Coverage for the employee's normal State of employment/hire. Including Employer's Liability insurance - with limits of not less than one million dollars (\$1,000,000) Each Accident, Disease-Each Employee, Disease-Policy Limit.

D. Umbrella/Excess Liability - in excess of General Liability, Product/Completed Operations, Employer's Liability, and Automobile Liability with limits no less than twenty million dollars (\$20,000,000) per occurrence. The Umbrella/Excess Liability shall follow-form to the underlying policies.

E. Environmental Liability/Pollution Legal Liability insurance (including Errors and Omissions) - with limits of not less than ten million dollars (\$10,000,000) per pollution incident for losses caused by pollution conditions that arise from the operations of the Operator pursuant to the License granted herein, with coverage being required beginning with the date of operation (the "Required Date"). This insurance may be on a claims-made basis; however, the retroactive date must precede the Required Date in order to cover all lines.

F. The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the Town, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Agreement, Operator shall provide a replacement policy. Operator shall maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Agreement and, in the case of the Commercial General Liability, for at least three (3) years after termination of this Agreement.

G. All policies shall be written on an occurrence basis. If unable to obtain an occurrence-based policy for any required coverage, policies may be written on a claims made basis. If any policies providing the required coverage(s) are written on a claims-made basis, the following is applicable:

- a. The retroactive date shall be prior to the Effective Date of this agreement.
- b. Operator shall maintain such policies on a continuous basis.
- c. If there is a change in insurance companies or the policies are canceled or not renewed, Operator shall purchase an extended reporting period of not less than three (3) years after the Agreement termination date.

H. Any deductibles in the insurance policies shall not in any way limit Operator's liability.

I. All policies shall contain provisions such that (or shall be endorsed such that):

a. The Town, its officers, employees, and agents are to be covered as and have the rights of additional insureds with respect to liability arising out of activities performed by or on behalf of Operator under this Agreement or applicable law or in the construction, operation or repair or ownership of the Well Pads, Subject Wells and Improvements;

b. Operator's insurance coverage shall be primary insurance with respect to the Town, its officers, employees and agents. Any insurance or self-insurance maintained by the Town, its officers, employees and agents shall be in excess of the Operator's insurance and shall not contribute to it; and

c. Operator's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought except with respect to the limits of the insurer's liability.

J. The insurance obtained by Operator shall be placed with insurers with an A.M. Best's rating of no less than "A-IX" (or a similar rating from an equivalent recognized ratings agency).

K. The Operator shall furnish the Town with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status, including additional insured status for Products/Completed Operations coverage. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. At the Town's option, the Operator may be required to provide full copies of the applicable insurance policies.

L. The Operator may self-insure all or any part of the insurance requirements of this Article V, Section 3, on the condition that such self-insurance complies with the laws of the State of Colorado and the COGCC's Rules and Procedures. In the event the Operator fails to provide insurance coverage for an event, then the Town will require the Operator to obtain coverage through an insurance company. In the event that the Operator fails to pay a loss, even though the Town can require insurance in the future, the Town's insurance will not back-date coverage and pay for the loss that the Operator failed to pay. Within ten (10) days of the Effective Date of this Agreement, Operator shall provide the Town with all documents reasonably necessary for the Town to evaluate the Operator's self-insurance program and, upon request of the Town at any time during the term of this Agreement, shall provide such documentation.

M. The Town shall provide prompt written notice to the Operator of the pendency of any action against the Town arising out of such exercise by the Operator of said rights and privileges and be permitted at its own expense to appear and defend, or assist in the defense of the same. The obligation of this Section shall not extend to any liability or damage and all reasonable expenses accruing against the Operator arising out of the negligence, recklessness, or willful and wanton misconduct of the Town, its officers, employees or agents.

N. Notwithstanding anything contained herein to the contrary, the Town may terminate this Agreement, and the License herein granted to Operator, if Operator fails to procure and maintain the insurance required herein.

O. If at any time while the Agreement is in effect, the limits of liability for local governments under the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., are raised above the limits of liability provided hereinabove, Operator's insurance requirement provided herein shall be increased accordingly upon written notice to Operator.

4. Defense and Indemnification. Operator agrees to indemnify, defend and hold harmless the Town, its officers, employees, Town Council, boards, agents, insurers, and insurer, from and against all liability, claims, demands or liens against the Town on account of injury, loss, or damage, including without limitation claims arising from bodily injury, sickness, disease, death, remediation or other costs, property loss or damage, or claims under any local, state or federal environmental law, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement or the use of the Town's Property by Operator pursuant to this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence of Operator, any contractor or subcontractor of the Operator, or any officer, employee, tenant, agent, customer, or representative of the Operator, or of any person permitted or allowed to use the Town's Property by Operator, or which arise out of any worker's compensation claim of any employee of the Operator or of any subcontractor of the Operator or of any tenant of Operator; except to the limited extent such liability, claim or demand arises through the negligence, recklessness, or willful and wanton misconduct of the Town, its officers, employees or agents. Operator agrees to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of the Operator. Operator also agrees to bear all other costs and expenses related thereto, including court costs and reasonable attorney fees. As used in this Paragraph, the term "claim" means any claim filed in any judicial or administrative forum and any administrative proceeding or order. This defense and indemnity does not apply to a claim or liability that arises from the negligence, recklessness, or willful misconduct of the Town, its officers, employees or agents or any claim that the terms of this Agreement or its consideration, approval and execution by the Town were improperly conducted or effectuated. The obligations of this Paragraph shall survive termination of this Agreement.

5. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed to the following:

If to the Town:

Town of Johnstown
Attention: Town Manager
450 S. Parish Avenue
PO Box 609
Johnstown, CO 80534
Email: mlecerf@townofjohnstown.com

If to the Operator:

Occidental Petroleum Corporation, including its wholly owned subsidiary Kerr-McGee Oil and Gas Onshore LP
1099 18th Street

Denver, Colorado 80202
Attn: Elizabeth Knowles, Municipal Planning Manager
Telephone: 720-929-6000
Email: Elizabeth_Knowles@oxy.com

Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given upon mailing. Notices personally delivered shall have been deemed to have been given upon delivery. Either party may change its address by giving notice thereof to the other party in the manner provided herein.

Notices of a more routine nature may be made by electronic mail ("e-mail") delivery on the condition that the receiving party confirms receipt of the e-mail.

6. Applicable Law, Jurisdiction and Venue. Colorado law shall apply to the construction and enforcement of this Agreement. The parties agree to the jurisdiction and venue of the courts of Weld County in connection with any dispute arising out of or in any matter connected with this Agreement.

7. Mediation. Except with respect to the right to seek injunctive relief, prior to commencing an action in a court of law, the Parties shall submit the disputed matter to mediation. The cost of the mediation shall be split equally between the Parties. If the mediation is not completed within sixty (60) days, the non-defaulting Party may commence an action in a court of law.

8. Attorney Fees. If any action is brought in a court of law by either Party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, to the extent permitted by law, the prevailing Party, either at trial or upon appeal, shall be entitled to reasonable attorney fees as well as costs, including expert witness fees, incurred in the prosecution or defense of such action.

9. Waiver. The failure of either Party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A Party waives only those rights specified in writing and signed by the Party waiving its rights.

10. Governmental Immunity. The Parties hereto understand and agree that Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time amended, or any other law or limitations otherwise available to Town, its officers, or its employees.

11. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties hereto and supersedes any prior agreement or understanding relating to the subject matter of this Agreement. Any such prior agreement shall be deemed to be null and void and of no further effect.

12. Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the Parties hereto.

13. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

14. Terminology. Wherever applicable, the pronouns in this Agreement designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Agreement, the singular shall include the plural, and the plural shall include the singular.

[signatures on following pages]

Exhibit A

S & B 5-11 HZ Pad located - S/2 NW/4 Section 11, T4N, R68W

Point Three 11-16 HZ Pad location – W/2 Section 16 T4N, R67W

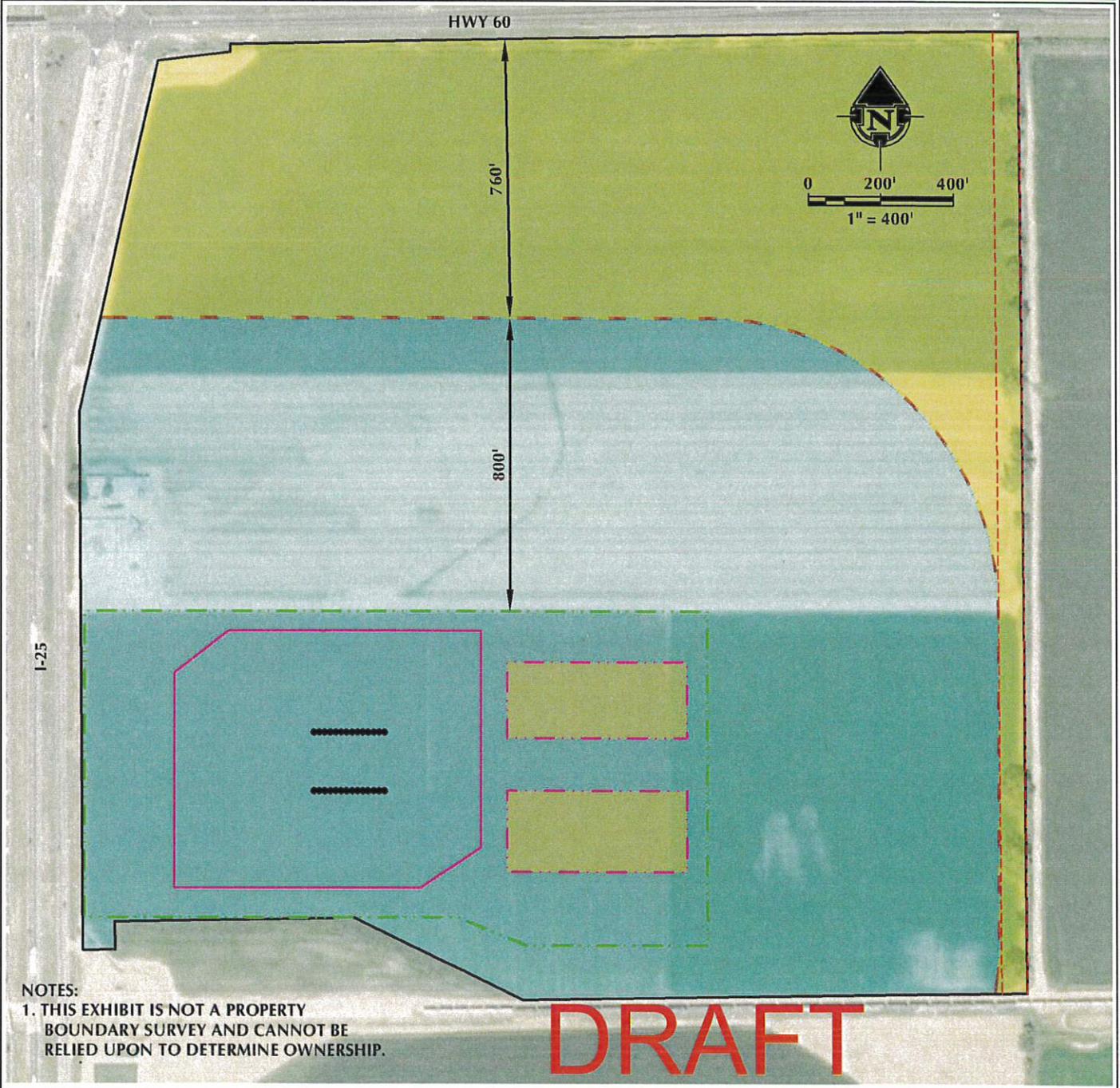
Oakwood 13-24HZ Pad location – W/2 SE/4Section 24, T5N, R68W

EXHIBIT A-1

PROPERTY EXHIBIT

S&B 5-11HZ

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.

DRAFT

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
 1093 Suburban Avenue
 Sheridan, Wyoming 82801
 Phone: 307-671-0609

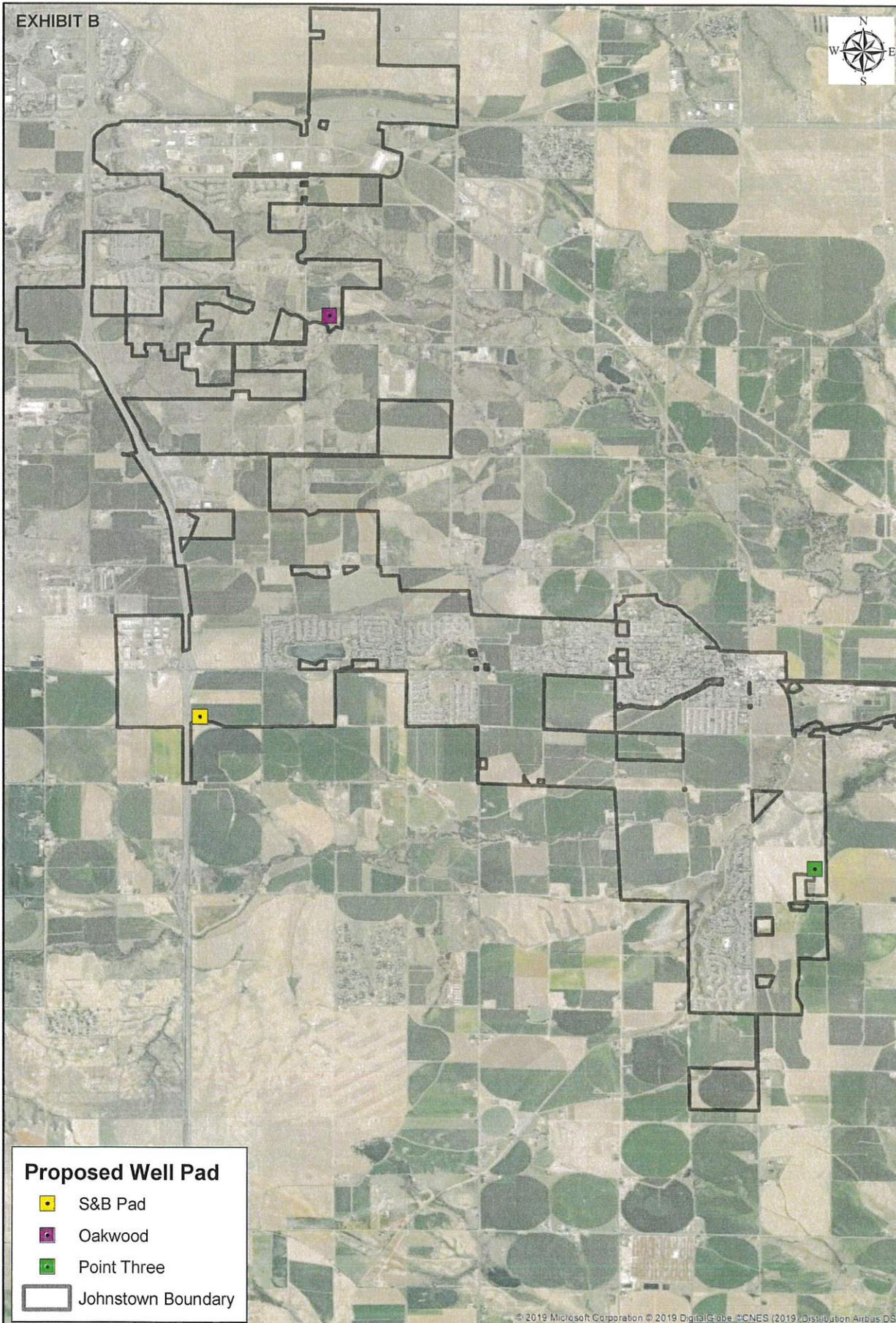
DATE SURVEYED: N/A
 DATE: 7/25/19
 DRAFTER: SRS
 REVISED: 7/29/19

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.

K:\HANDWRITING\2018_2019_SHAKE_IT_UP\68HW_SEC_11\DWG\SHAKE_IT_UP_68HW_7/29/2019 3:08:28 PM.dwg

EXHIBIT B



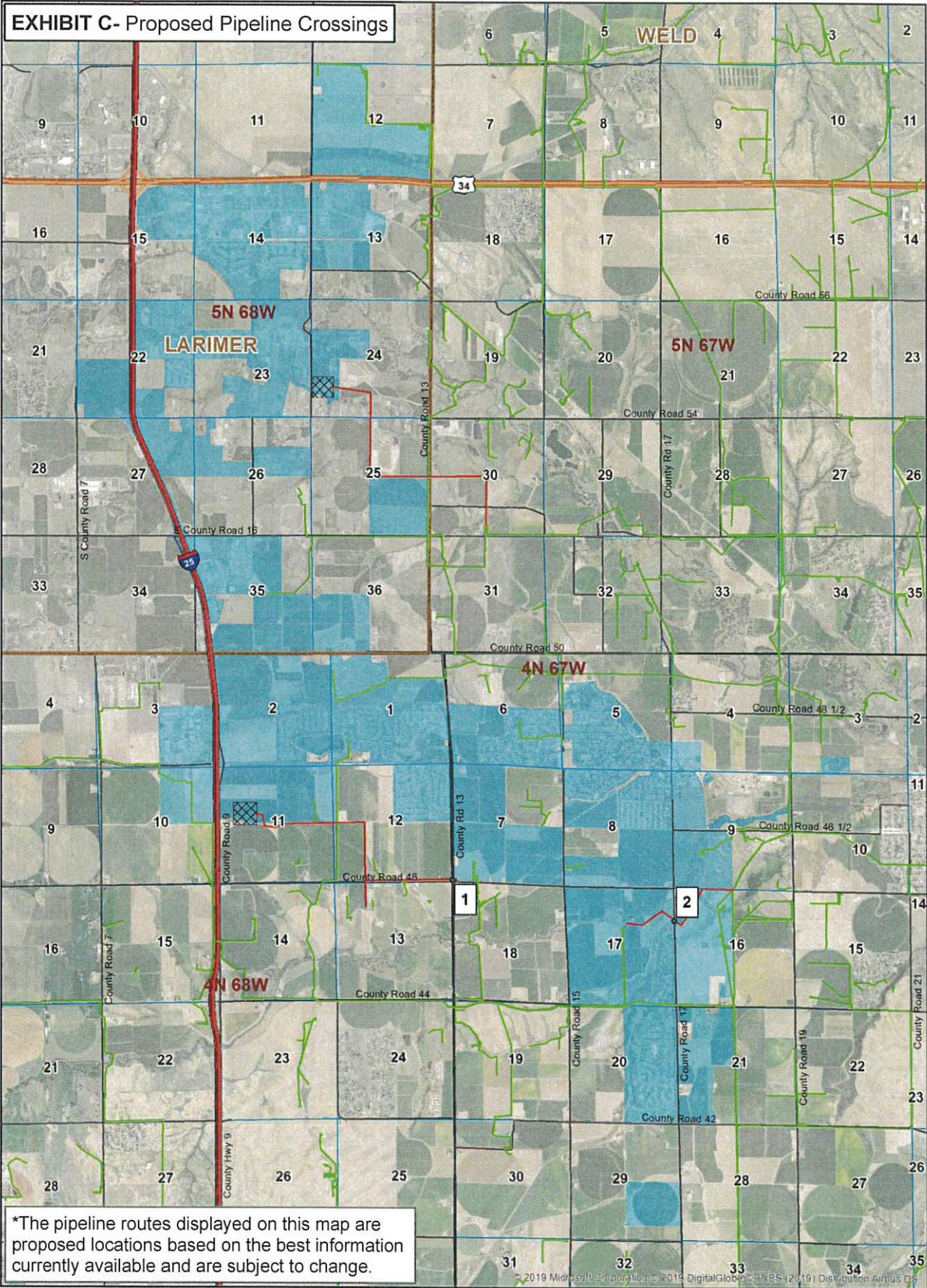
Proposed Well Pad

-  S&B Pad
-  Oakwood
-  Point Three
-  Johnstown Boundary

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Proposed locations shown above are for reference purposes only. Final locations may vary.



*The pipeline routes displayed on this map are proposed locations based on the best information currently available and are subject to change.

- Crossing Location
- Proposed Pipeline
- Active Pipeline
- ⊠ Well Pad Location
- ▭ Johnstown Municipal Boundary
- ▭ County Line
- ▭ PLSS Townships
- ▭ PLSS Sections

PROPOSED PIPELINE CROSSINGS
 1) Pipeline crossing at Weld County Road 13
 2) Pipeline crossing at Weld County Road 17

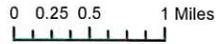


EXHIBIT D

[Best Management Practices for Well Pads]

1. **Odor Mitigation.** Operator will prevent odors by routing to closed loop systems to the maximum extent practicable. Odor emitting from the Subject Wells must be controlled immediately. Operator must minimize odors by proactively addressing and resolving, to the maximum extent practicable, citizen concerns within 24 hours. Operator must add additives to drilling fluids to prevent or minimize odors but cannot mask odors. In order to meet the provisions of this section, Operator implements the following measures:
 - A. Erect walls around the Well Pads as required by the Town to limit airflow through the well sites during the drilling and completion of wells. Determination of full or partial wraps will be mutually agreed upon by Operator and the Town;
 - B. Utilization of additive concentration to drilling mud to neutralize odors;
 - C. Wiping down the drill pipe each time that the drilling operation “trips” out of the hole;
 - D. Continue to evaluate different additive formulations that have the potential to better suppress odors, including but not limited to non-diesel based additives;
 - E. During flowback and well completions, utilize closed-loop green completion techniques to the maximum extent practicable to minimize emissions and the flaring of natural gas; and
 - F. Drill cutting will be run through a centrifugal dryer to minimize odor during temporary time on location and during transport to disposal.

2. **Noise Mitigation.** To reduce the noise effects on the Town and its residents and to provide cost benefits to Operator, all permanent equipment with engines or motors that can be electrified will be electrified from the power grid. Additionally,
 - a. Operator agrees to use a quiet completions fleet on all well sites for completion operations;
 - b. Operator agrees to use a quiet rig with modifications such as noise dampening baffels, luvvers, muffler enclosures and portable walls as needed.
 - c. Erect walls around the Well Pads as required by the Town during the drilling and completion of wells. Determination of full or partial wraps will be mutually agreed upon by Operator and the Town;

- d. Operator will develop and implement in consultation with the Town a Noise Mitigation and Monitoring Plan that provides for continuous monitoring and modeling from four (4) sides of the facility at least 350 feet from the sound wall where possible provided that approval from surrounding surface owners can be obtained. The plan should identify site-specific noise mitigation techniques such as dirt moving to attenuate noise, and source- based noise mitigation.
3. **Lighting.** Operator will install down cast lighting or some other form of lighting that mitigates light pollution and spill-over onto adjacent properties; provided, however, that Operator may still use lighting that is necessary for public and occupational safety.
4. **Road Repairs.** The Parties recognize that truck traffic accessing the Well Pads may cause damage to Town roads and that road repairs may be needed to mitigate such damage. Operator will arrange for a qualified outside consultant to perform a road impact study for all Town roads that are used to access a Well Pad during the term of the Agreement. The consultant will conduct the first part of the study prior to Operator's drilling and completions phase of operations at such Well Pad and the second part of the study after Operator completes all drilling and completions at such Well Pad. The Parties will use these studies to determine the extent of any damage accruing to the road during the study period. Operator will then promptly pay Town to repair such damage or else arrange and pay the cost of such repairs itself based on Town's preference.
5. **Drilling Pipe and other Large Tubulars Loading.** Operator shall make all attempts possible to avoid loading large tubulars between 7:00 p.m. and 7:00 a.m. Mountain Time.
6. **Complaint Responsiveness.** Operator shall be available by, among other potential means, telephone between 7:00 a.m. and 7:00 p.m. Mountain Time to address Town and citizen complaints. Such complaints shall be addressed and, to the extent practicable, resolved within twenty four (24) hours of receipt.

EXHIBIT E

[Specifications for Access Roads and Mud Tracking]

Access Roads. Access points to public roads shall be located, improved and maintained to assure adequate capacity for efficient movement of existing and projected traffic volumes and to minimize traffic hazards. Access roads shall be improved to a point one hundred (100) feet from connection to a public road. The access road shall be an aggregate bed track-out apron in the appropriate depth to support the weight load requirements of the vehicles accessing the facilities.

Plans and Specifications. Plans and specifications for installing stabilized access shall be in keeping with this section. At a minimum include the following items:

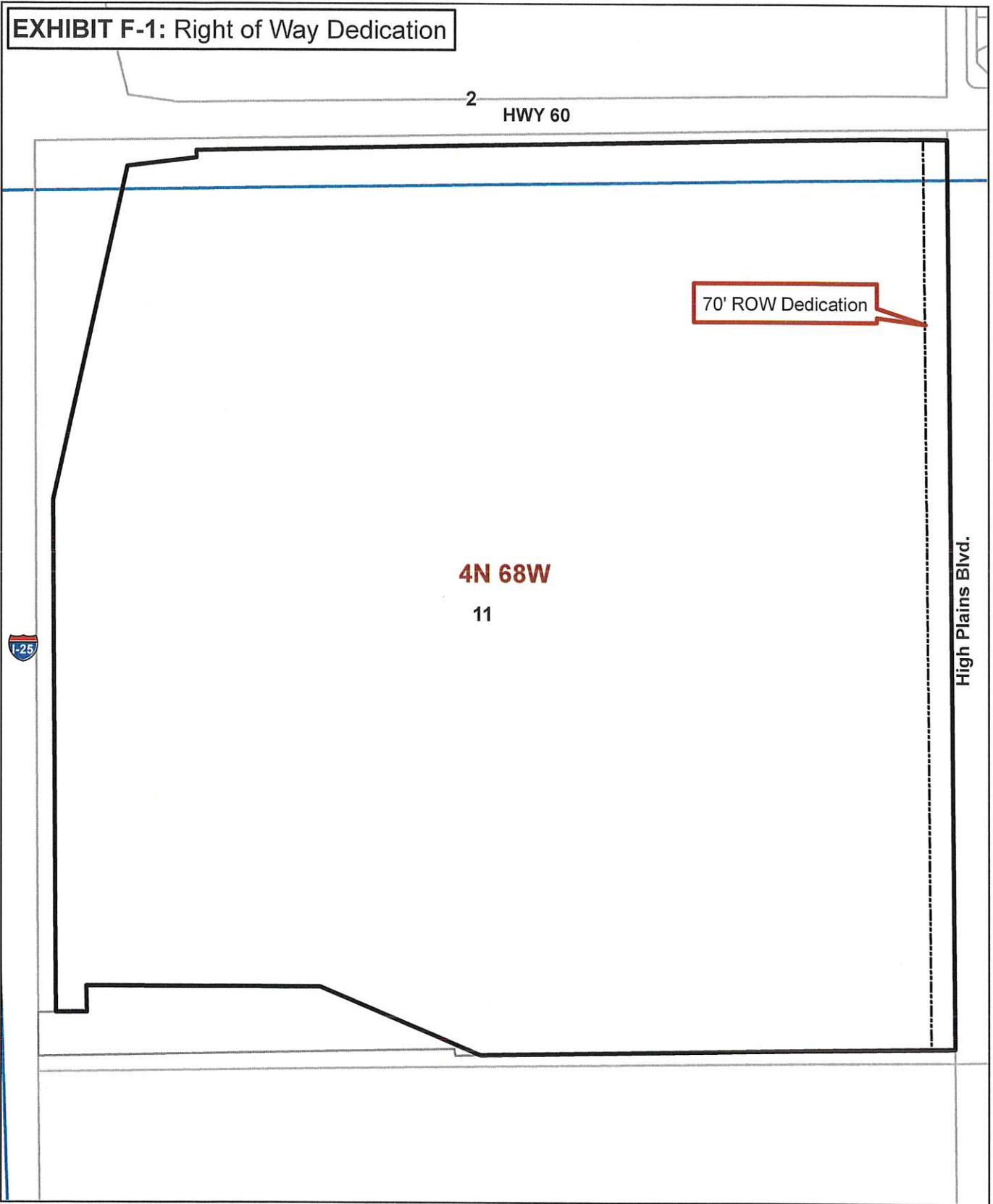
1. Location.
2. Length.
3. Width.
4. Thickness.
5. Type of materials.
6. Aggregate size. Filter fabric shall be used under the aggregate to minimize the migration of stone into the underlying soil by heavy vehicle loads.

All plans shall include the installation, inspection, and maintenance schedules with the responsible party identified, and approved by the Town Engineer or Public Works Director.

At the time any Town road is paved, the access road standards in effect at that time will apply. Operator agrees to coordinate with the Town to improve connected access roads to those standards.

Mud Tracking. The Operator shall take all practicable measures to ensure that vehicles do not track mud and debris onto Town streets. Operator also agrees that any access road shall be improved pursuant to the above Access Roads Section to alleviate mud and debris tracking onto Town streets. If mud and debris is nonetheless deposited on Town streets, in excess of de minimus levels, the streets shall be cleaned immediately by the Operator. If for some reason this cannot be done, or needs to be postponed, the Town shall be notified of the Operator's plan for mud and debris removal.

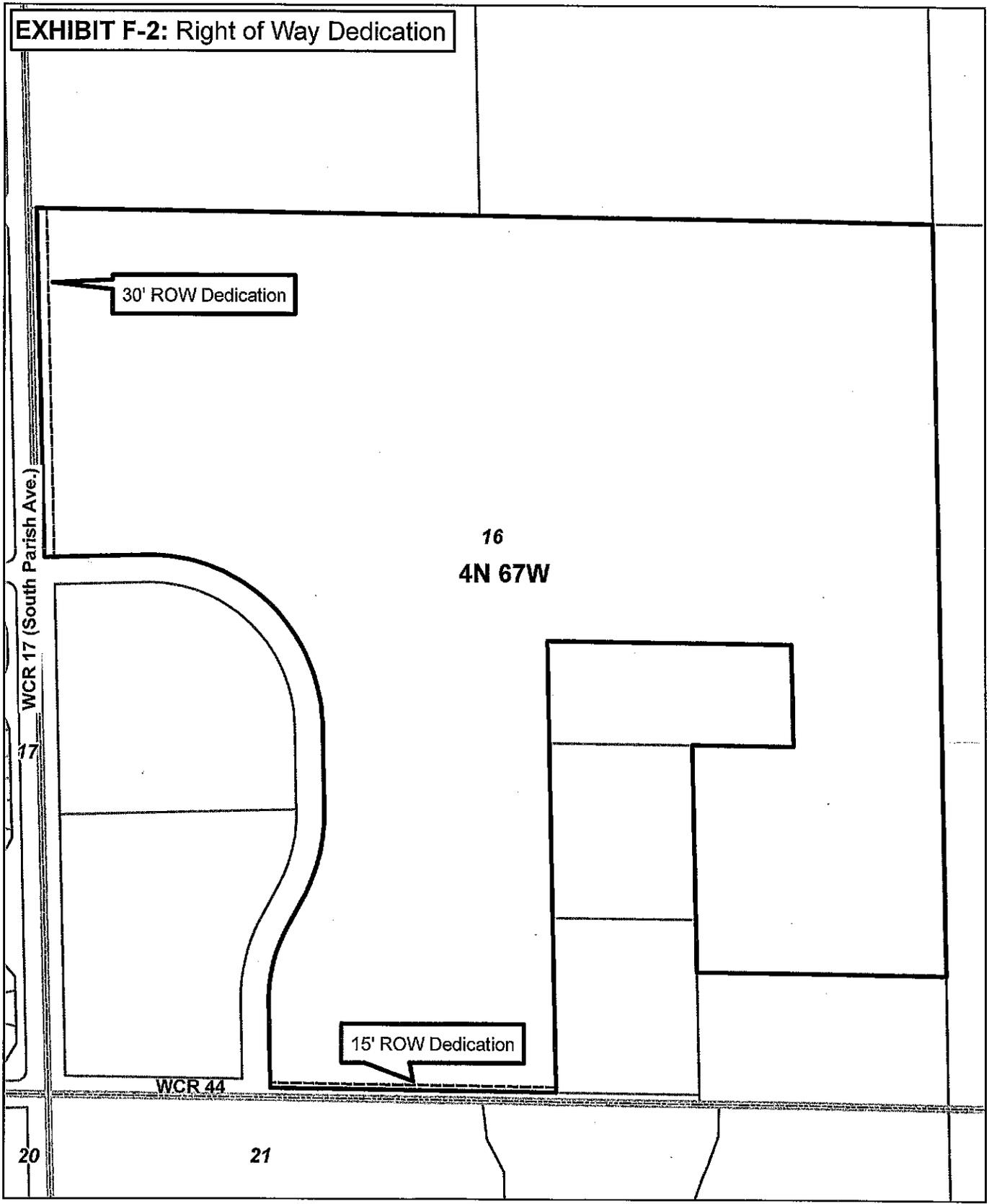
EXHIBIT F-1: Right of Way Dedication



- Property Boundary
- Tax Parcels
- PLSS Sections

0 750 1,500 Feet

EXHIBIT F-2: Right of Way Dedication



- Property Boundary
- Tax Parcels
- PLSS Sections

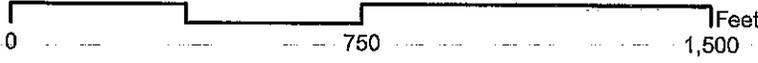
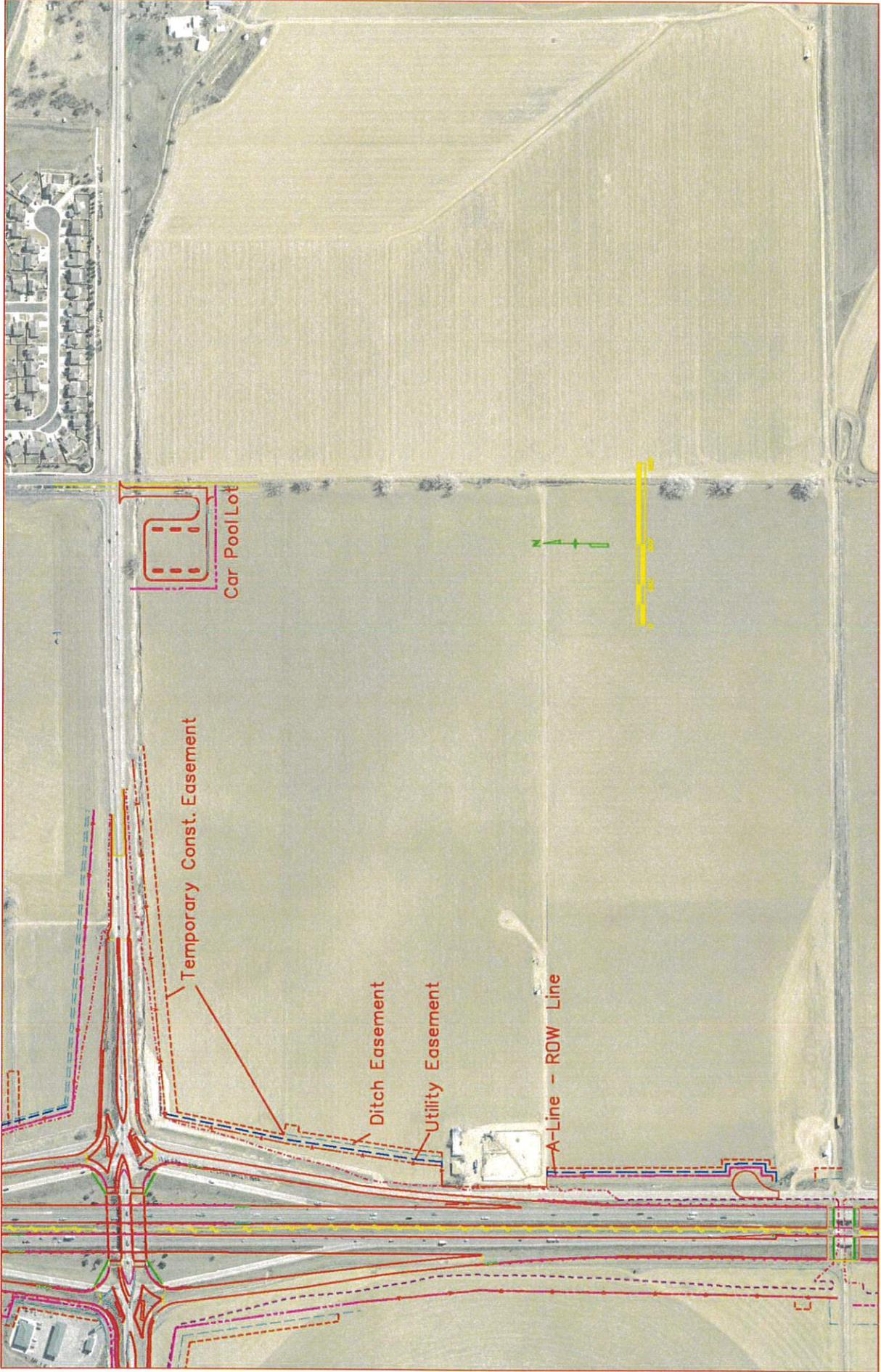


EXHIBIT G: CDOT DEDICATION



AGENDA ITEM 10E

Resolution No. 2019-27

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: December 2, 2019

ITEM NUMBER: 10E

SUBJECT: FY 2019 Budget Amendment

ACTION PROPOSED: Approve the Proposed FY 2019 Budget Amendments as Presented

ATTACHMENTS: 1. Resolution 2019-27

PRESENTED BY: Mitzi McCoy, Finance Director

AGENDA ITEM DESCRIPTION:

Below is a series of budget amendment requests for 2019. The changes to the budget presented for consideration are from agenda items that were previously approved by the Council earlier in the year. To limit the possible repetition of budget amendments, staff waited until this time with the hope that no further budget amendments would be necessary. We also provide the Council approved expenditures and estimated fund balance for FY 2019 and the proposed expenditures and estimated fund balance based on the amendment. All numbers related to ending fund balances and expenditures have been rounded to the extent possible.

General Fund:

1. Library Payment - \$1,708,054
 - a. This expenditure is an additional payment to the Library for property taxes due to the library based on the 1985 and 2001 mill levies.

2. Developer Reimbursement Costs - \$325,000
 - a. As part of development reviews, the Town collects funds from developers as our external review partners incur costs. These costs are paid for by the Town and then reimbursed by the developer with the deposits they pay and replenish based on the review costs. This as a result is a pass-through cost, but is shown as an expenditure and a revenue on each end of the transaction.

FY 2019 Approved Expenditures:	\$31,260,100
FY 2019 Approved Estimated Ending Fund Balance:	\$24,960,200
FY 2019 Budget Amendment Expenditures (March 2019):	\$90,500
FY 2019 Budget Amendment Expenditures (July 2019):	\$177,349
FY 2019 Budget Amendment Expenditures (December 2019):	\$2,033,054
FY 2019 Budget Total Expenditures with Amendments:	\$33,561,003
FY 2019 Budget Estimated Ending Funds Balance with Amendment:	\$22,659,297

Water Fund:

1. Water Town Painting - \$59,487

- a. On October 7, 2019 Council was presented with an agenda item to consider authorizing a contract to repaint the two water tanks at the Water Treatment Plant. The request was made as a result of vandalism to the water tanks by two individuals who were arrested and charged related to the incident. CIRSA our insurance company provided us with a payment for repair of \$60,006.60.

FY 2019 Approved Expenditures: \$ 2,483,900
FY 2019 Approved Estimated Ending Fund Balance: \$22,822,400

FY 2019 Budget Amendment Expenditures (March 2019): \$ 6,255,826
FY 2019 Budget Amendment Expenditures (December 2019): \$ 59,487
FY 2019 Budget Total Expenditures with Amendments: \$ 8,799,213
FY 2019 Budget Estimated Ending Funds Balance with Amendment: \$16,507,087

Sewer Fund:

1. Sewer Improvements – \$795,000

- a. The Town has been working with its consulting engineer on sanitary sewer improvements necessary to meet the additional capacity needs of the future growth in Johnstown. In July 2019, Staff presented an action plan related to methods to improve the sanitary sewer interceptors and were directed to move forward with the concept and begin implementation of a master plan. In August 2019, Staff presented Council with a contract with IMEG, Inc. to begin preliminary engineering and design for the project. The contract was for \$1,240,000. An estimated \$795,000 will be expended this year, with a planned carry-over in the budget of \$445,000.

FY 2019 Approved Expenditures: \$ 2,074,000
FY 2019 Approved Estimated Ending Fund Balance: \$10,571,800

FY 2019 Budget Amendment Expenditures (March 2019): \$ 3,180,174
FY 2019 Budget Amendment Expenditures (December 2019): \$ 795,000
FY 2019 Budget Total Expenditures with Amendments: \$ 6,049,174
FY 2019 Budget Estimated Ending Funds Balance with Amendment: \$ 6,596,626

Capital Projects Fund:

1. BHA Design – \$33,800

- a. On August 5, 2019, Council approved a contract with BHA Design to develop a design for aesthetic improvements to the Highway 60 and I-25 Interchange. These improvements coincide with CDOT's plan to improve this interchange with a Divergent Diamond Interchange. Plans are currently 30% complete and it is expected that 60% design completion will be achieved around January 2020. The contract with BHA to develop the design for CDOT to incorporate into the planned interchange improvements will be completed around January.

2. Street Improvements - \$369,985

- a. The Town awarded a bid for a road overlay project in received in Spring 2019. While performing the mill work for some of the roadways, the contractor noted a depth that was less than expected in a pavement section and communicated with the Town related to this matter. Because of only a 3" thickness to the pavement (1" or less in areas after the mill), Staff requested a change order that was approved by the Council to reconstruct the roadway sections impacted to ensure a quality product and outcome. The change order presented and approved was for \$429,985, but we came in under budget a.

3. Reimbursement Agreement - \$466,263

- a. In December 2006, the Town entered into an annexation agreement with 2534 Development, Inc. as part of the WRFG Annexation. This agreement states that the Town will reimburse the developer for specific improvements and that interest on those improvements will accrue from the date of completion and acceptance at the interest rate that is equal to the interest rate received by the Town on its investments over the 12 month period preceding the date that interest begins to accrue. The improvements were accepted by the Town in 2007, at which time the Town had an average return on its investments of 5.092%. This payment represents the accrued interest on the improvements and brings the amount due from the Town to zero.

FY 2019 Approved Expenditures:	\$ 9,973,500
FY 2019 Approved Estimated Ending Fund Balance:	\$ 10,798,300
FY 2019 Budget Amendment Expenditures (December 2019):	\$ 870,048
FY 2019 Budget Total Expenditures with Amendments:	\$ 10,843,548
FY 2019 Budget Estimated Ending Funds Balance with Amendment:	\$ 9,928,252

LEGAL ADVICE:

The resolution was reviewed by the Town Attorney

FINANCIAL ADVICE:

Funds are available in the various funds to meet the additional expenditures considered in this budget amendment.

RECOMMENDED ACTION:

SUGGESTED MOTIONS:

For Approval:

I move to approve the resolution as presented for the FY 2019 Budget Amendment.

For Denial:

I move that we deny the resolution as presented for the FY 2019 Budget Amendment

Reviewed and Approved for Presentation:

Town Manager

TOWN OF JOHNSTOWN

RESOLUTION NO. 2019-27

A RESOLUTION AMENDING THE FISCAL YEAR 2019 BUDGET AND APPROPRIATING ADDITIONAL SUMS OF MONEY TO DEFRAY EXPENSES AND TRANSFERS IN EXCESS OF AMOUNTS BUDGETED FOR THE TOWN OF JOHNSTOWN, COLORADO.

WHEREAS, on December 3, 2018, the Town Council, adopted, by Resolution No. 2018-19, the Fiscal Year 2019 Budget ("2019 Budget"); and

WHEREAS, the Town Council of the Town of Johnstown has received a recommendation from Town staff to revise the 2019 spending plan for the funds listed below and the Town Manager has certified that there are revenues available for appropriation in excess of those estimated in the 2019 Budget; and

WHEREAS, projects have been evaluated and expenditures are being adjusted for the 2019 operating and capital budgets; and

WHEREAS, the Town Council agrees to modify appropriated expenditures for the 2019 Budget, insuring the budget will be in balance and that authorized budgeted expenditures are amended, as required by law; and

WHEREAS, money is available in the various funds clearly described below in the form of the unappropriated or unrestricted reserves.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:

Expenditures

Section 1. General Fund:

Whereas, during 2019, the Town Council of the Town of Johnstown determines that the Fiscal Year 2019 Budget General Fund appropriations expense is hereby increased from \$31,527,949 to \$33,561,003 for the purpose of defraying additional expenses.

Section 2. Water Fund:

Whereas, during 2019, the Town Council of the Town of Johnstown determines that the Fiscal Year 2019 Budget Water Fund appropriations expense is hereby increased from 8,739,726 to \$8,799,213 for the purpose of defraying additional expenses.

Section 3. Sewer Fund:

Whereas, during 2019, the Town Council of the Town of Johnstown determines that the Fiscal Year 2019 Budget Sewer Fund appropriations expense is hereby increased from \$5,254,174 to \$6,049,174 for the purpose of defraying additional expenses.

Section 4. Capital Projects Fund:

Whereas, during 2019, the Town Council of the Town of Johnstown determines that the Fiscal Year 2019 Budget Impact Fee Fund appropriations expense is hereby increased from \$9,973,500 to \$10,843,548 for the purpose of defraying additional expenses.

PASSED, SIGNED, APPROVED AND ADOPTED at a regular meeting of the Town Council of the Town of Johnstown on this 2nd day of December, 2019.

ATTEST

TOWN OF JOHNSTOWN, COLORADO

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor