

***TOWN COUNCIL***

***MEETING***

***PACKET***

**July 1, 2019**



## Town Council

### Agenda

Monday, July 1, 2019  
Town Hall, Council Chambers  
450 So. Parish Avenue  
7:00 PM



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**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.”*

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*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) **RECOGNITIONS AND PROCLAMATIONS –**

5) **PUBLIC COMMENT (three-minute limit per speaker)**

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*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.*

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6) **CONSENT AGENDA**

A) Town Council Meeting Minutes – June 17, 2019

B) **2<sup>nd</sup> Reading** – Ordinance No. 2019-162, an Ordinance Amending Section 1-62, 1-63, 2-74, 8-26, 8-81, 8-82, 13-114, 16-370, 17-206 and 17-264 of the Johnstown Municipal Code to Provide Uniformity in the Penalty Provisions of the Code and Omit the Possibility of Incarceration for Municipal Ordinance Violations.

C) Addendum to Water and Sewer Service Agreement between Town of Johnstown and Clayton Properties Group II, Inc.

7) **TOWN MANAGER REPORT**

8) **TOWN ATTORNEY REPORT**

9) **OLD BUSINESS**

10) **NEW BUSINESS**

A. **Public Hearing** – New Hotel & Restaurant License – Cheba Hut Investment Company, Inc.

B. **Public Hearing** –

1) I-25 Gateway Center Filing No. 4 PUD Amendment No. 2 to the Outline Development Plan

2) **First Reading** – Ordinance Number 2019-163 – an Ordinance Approving I-25 Gateway Center Filing No. 4 PUD Amendment No. 2, Amending the Outline Development Plan for Property Located in the Southeast Quarter of Section 3, Township 4 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado

C. Consider Easement Agreement (Return Flow Pipeline) among the Town of Johnstown, Thompson Crossing Metropolitan District No. 3 and Clayton Properties Group II, Inc. and (2) Assignment from W.R. Investment, LLC to the Town of Johnstown

D. Resolution 2019-17, A Resolution Appropriating Additional Sums of Money to Defray Expenses and Transfers in Excess of Amounts Budgeted for the Town of Johnstown, Colorado

11) **EXECUTIVE SESSION**

12) **COUNCIL REPORTS AND COMMENTS**

**13) MAYOR'S COMMENTS**

**14) ADJOURN**

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**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.

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** July 1, 2019

**ITEM NUMBER:** 6A-C

**SUBJECT:** Consent Agenda

**ACTION PROPOSED:** Approve Consent Agenda

**PRESENTED BY:** Town Clerk

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**AGENDA ITEM DESCRIPTION:** The following items are included on the Consent Agenda, which may be approved by a single motion approving the Consent Agenda:

- A) Town Council Meeting Minutes – June 17, 2019
- B) **2<sup>nd</sup> Reading** Ordinance Number 2019-162 – an Ordinance Amending Section 1-62, 1-63, 2-74, 8-26, 8-81, 8-82, 13-114, 16-370, 17-206 and 17-264 of the Johnstown Municipal Code to Provide Uniformity in the Penalty Provisions of the Code and Omit the Possibility of Incarceration for Municipal Ordinance Violations
- C) \*Addendum to Water and Sewer Service Agreement

\* The Town's water engineer and Clayton Property Group II, Inc., the developer of Thompson River Ranch, reviewed the prior water and sewer service agreements for the development, to and including the water and sewer service agreement for Filing No. 9, and conducted an informal audit to, among other reasons, true up the water credit available to the development. To clarify the correct amount of surplus dedication credit available for future filings, and replace the prior water and sewer service agreements with respect to the singular issue of the surplus credit, the Town may enter into the Addendum to Water and Sewer Service Agreement. The Addendum was prepared by the Town's water attorney.

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**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.

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**FINANCIAL ADVICE:** N/A

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**RECOMMENDED ACTION:** Approve Consent Agenda

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**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, June 17, 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, Mellon, Molinar Jr., and Young

Those absent were: Councilmember Lemasters and Tallent

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

#### Agenda Approval

Councilmember Mellon made a motion seconded by Councilmember Berg to approve the Agenda. Motion carried with a unanimous vote.

#### Recognitions and Proclamations

Johnstown's youth were honored and celebrated for outstanding accomplishments in academics and sports. Mayor Lebsack read proclamations honoring them for their accomplishments.

Commander Sanchez was also recognized for his graduation from the FBI National Academy.

#### Consent Agenda

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

- June 3, 2019 Council Meeting Minutes
- Payment of Bills
- May Financial Statements
- 2<sup>nd</sup> Reading Ordinance Number 2019-161
- Lease of Water Rights Agreement

Motion carried with a unanimous vote.

#### New Business

A. Public Hearing – (First Reading) – Consider Ordinance No. 2019-162, an Ordinance Amending Section 1-62, 1-63, 2-74, 8-26, 8-81, 8-82, 13-114, 16-370, 17-206 and 17-264 of the Johnstown Municipal Code to Provide Uniformity in the Penalty Provisions of the Code and Omit the Possibility of Incarceration for Municipal Ordinance Violations – Ordinance Number 2019-162 will provide uniformity in the penalty provisions of the Code and will be consistent with state law, and allows the Town to seek the maximum fine provided by state law and omits the possibility of incarceration for municipal ordinance violations.

Mayor Lebsack opened the public hearing at 7:30 and having no public comment closed the hearing at 7:34 p.m.

Councilmember Berg made a motion seconded by Councilmember Mellon to approve Ordinance No. 2019-162, an Ordinance Amending Sections 1-62, 1-63, 2-74, 7-154, 8-26, 8-81, 8-82, 13-114, 16-370, 17-206 and 17-264 of the Johnstown Municipal Code to Provide Uniformity in the Penalty provision of the Code and Omit the Possibility of Incarceration for Municipal Ordinance Violations. Motion carried with a unanimous vote.

#### Executive Session

Executive session for the purpose of developing strategy for negotiations and instructing negotiators regarding development pursuant to C.R.S. 24-6-402(4)(e). Councilmember Mellon made a motion seconded by Councilmember Young to recess into executive session at 7:37 p.m. Motion carried with a unanimous vote.

Mayor Lebsack reopened the meeting at 8:27 p.m. and stated there were no decisions made and there was no other items discussed than what was originally stated.

There being no further business to come before Council the meeting adjourned at 8:37 p.m.

Mayor

Town Clerk

# **Ordinance 2019-162**

**TOWN OF JOHNSTOWN, COLORADO  
ORDINANCE NO. 2019-162**

**AN ORDINANCE AMENDING SECTIONS 1-62, 1-63, 2-74, 7-154, 8-26, 8-81, 8-82, 13-114, 16-370, 17-206 AND 17-264 OF THE JOHNSTOWN MUNICIPAL CODE TO PROVIDE UNIFORMITY IN THE PENALTY PROVISIONS OF THE CODE AND OMIT THE POSSIBILITY OF INCARCERATION FOR MUNICIPAL ORDINANCE VIOLATIONS.**

**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**, in 2013, the Colorado General Assembly raised the maximum amount a municipal court is entitled to fine from one thousand dollars (\$1,000) to two thousand six hundred and fifty dollars (\$2,650), subject to inflationary adjustments; and

**WHEREAS**, by Ordinance No. 2015-138, the Town modified Section 2-74 of the Johnstown Municipal Code (“Code”), “Fines imposed by Municipal Court,” to be consistent with the increased fine permitted by state law; and

**WHEREAS**, on or about March 28, 2019, the Colorado General Assembly adopted House Bill 19-1148, changing the maximum jail sentence for municipal ordinance violations from one year to three hundred sixty-four (364) days; and

**WHEREAS**, based on prior action of Town Council, Section 1-62 of the Code, the general penalty section, and Section 2-74 of the Code do not provide for imprisonment as a potential penalty for the violation of municipal ordinances; and

**WHEREAS**, despite the foregoing, various sections of the Johnstown Municipal Code contain penalty provisions providing that the maximum fine is one thousand dollars (\$1,000) and/or that a person may be subject to imprisonment for a period, in some instances, of up to one (1) year; and

**WHEREAS**, the Town Council desires to amend those provisions to refer to the general penalty provision contained in Article IV of Chapter 1 of the Code, thus allowing the Town to seek the maximum fine permitted by state law, omit the possibility of incarceration for municipal ordinance violations and provide uniformity in the penalty provisions of the Johnstown Municipal Code; and

**WHEREAS**, the Town Council deems this Ordinance to be in the best interests of the Town of Johnstown.

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

**Section 1.** Section 1-62 of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 1-62. General penalty for violations of Code; continuing violations.**

Whenever in this Code or in any ordinance of the Town an act is prohibited or is made or declared to be unlawful, an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinances shall be punished by a fine not exceeding two thousand six hundred fifty dollars (\$2,650.00). The maximum fine amount shall be adjusted for inflation on January 1 of each year as provided by Section 13-10-113, C.R.S., as amended. Each day any violation of this Code or any ordinance continues shall constitute a separate offense.

**Section 2.** Section 1-63 of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 1-63. Application of penalties to juveniles.**

Every person who, at the time of commission of the offense, was at least ten (10) but not yet eighteen (18) years of age and who is subsequently convicted of or pleads guilty or nolo contendere to a violation of any provision of this Chapter shall be punished by a fine not exceeding two thousand six hundred fifty dollars (\$2,650.00). The maximum fine amount shall be adjusted for inflation on January 1 of each year as provided by Section 13-10-113, C.R.S., as amended. Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge.

**Section 3.** Section 2-74(b) of the Johnstown Municipal Code shall be amended to read as follows

**Sec. 2-74. Fines imposed by the Municipal Court.**

(b) *Maximum Fine.* The total fine, including the additional fine, shall not exceed the amount set forth in Article IV of Chapter 1 of the Code.

**Section 4.** Section 7-154 of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 7-154. Violation; penalty.**

The violation of or failure to comply with the provisions of this Article shall constitute an offense against the Town and subject the offender to a minimum fine for the first offense in the amount of \$25.00, a minimum fine for the second offense in the amount of \$50.00 and a minimum fine for the third offense in the amount of \$75.00. The minimum fines shall be mandatory and shall not be suspended for any reason. For all offenses, the offender shall be subject to a maximum fine not exceeding the amount set forth in Article IV of Chapter 1 of the Code. Any person charged with a fourth offense shall be required to appear in Municipal Court.

**Section 5.** Section 8-26(2) of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 8-26. Penalties.**

- (2) Every person convicted of a violation of any of the provisions stated or adopted in this Chapter shall be punished by a fine not exceeding the amount set forth in Article IV of Chapter 1 of the Code.

**Section 6.** Section 8-81(f) of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 8-81. Compulsory proof of insurance.**

- (f) Penalties. It shall be unlawful to violate any provision of this Section and, upon conviction, the guilty party may be sentenced to a fine not exceeding the amount set forth in Article IV of Chapter 1 of the Code. The minimum fine for a conviction of the violation of this Section shall be one hundred dollars (\$100.00).

**Section 7.** Section 8-82(g) of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 8-82. Mandatory use of safety belt.**

- (g) It shall be unlawful to violate any provision of this Section and, upon conviction, the guilty party may be sentenced to a fine not exceeding the amount set forth in Article IV of Chapter 1 of the Code.

**Section 8.** Section 13-114 of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 13-114. Penalty for violation.**

It shall be unlawful to violate any of the terms and conditions of this Article, and the penalties for violation of this Article shall be as follows:

<i>Offense</i>	<i>Penalty</i>
1st offense	\$ 25.00
2nd offense	50.00
3rd offense	100.00
4th offense	200.00
5th or any subsequent offense	Minimum fine of \$1,000.00 and maximum fine not exceeding the amount set forth in Article IV of Chapter 1 of the Code

**Section 9.** Section 16-370(a) of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 16-370. Enforcement and penalties.**

(a) A person who violates the requirements of this Section shall be punished by a fine not exceeding the amount set forth in Article IV of Chapter 1 of the Code.

**Section 10.** Section 17-206(b) of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 17-206. Violation and enforcement.**

(b) Penalty. Any person, firm, corporation or legal entity that constructs, installs or uses, or which causes to be constructed, installed or used, any oil and gas well or well site in violation of any provision of this Article or of the conditions and requirements of the special use permit may be punished by a fine not exceeding the amount set forth in Article IV of Chapter 1 of the Code. Each day of such unlawful operation shall constitute a separate violation. Any subsequent violation after any conviction of a violation of this Article shall be punished by a minimum fine of five hundred dollars (\$500.00) for each subsequent violation which may not be suspended by the Court.

**Section 11.** Section 17-264 of the Johnstown Municipal Code shall be amended to read as follows:



**Sec. 17-264. Administration.**

(b) Penalties for noncompliance. A person who violates the requirements of this Article shall be punished by a fine not exceeding the amount set forth in Article IV of Chapter 1 of the Code. Each day that any such violation continues shall constitute a separate violation and shall subject the perpetrator to a separate penalty.

**Section 12. 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 13. Code revisions.** Minor changes such as the format and other related 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 of this Ordinance be altered by such changes.

**Section 14. 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 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 17<sup>th</sup> day of June, 2019.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: Diana Seele

Diana Seele, Town Clerk

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

# **Agreement**

**ADDENDUM TO  
WATER AND SEWER SERVICE AGREEMENT**

THIS ADDENDUM TO WATER AND SEWER SERVICE AGREEMENT ("Addendum") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 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, the Parties have previously entered into several Water and Sewer Service Agreements for various filings of the Thompson River Ranch development ("Project"); and

WHEREAS, at the time of the execution of each of the previous Water and Sewer Service Agreements, the Parties believed in good faith that the quantity of demand and supply water set forth, including net surplus to be carried forward, was correct; and

WHEREAS, more recent investigations by the Parties have determined that certain errors were made in previous Water and Sewer Service Agreements; and

WHEREAS, the Parties desire to correct those previous errors and set forth their agreement concerning corrected water rights dedications, water and sewer demand, carry over credit, and non-potable irrigated acreage for the Project.

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.** The Town's Water Engineer has reviewed previous Water and Sewer Supply Agreements between the Parties and water dedicated for the Project and has supplied the Parties a Memorandum dated May 31, 2019 (Exhibit A, attached hereto and incorporated herein). The Parties have reviewed said Memorandum, which is on file with the Town, and the Parties hereby accept the Memorandum as true and correct to the best of their knowledge at this time.

**2. Corrected Surplus Dedication Credit.** As of the date of this Addendum, after development approvals for Thompson River Ranch Filing No. 9, Developer has a surplus dedication credit with the Town of 12.10 acre-feet of potable raw water available for use in subsequent development filings in the Project. Developer also has a net remaining credit of 610 SFE in the Clayton Property Group SFE Water Credit Bank that is available for future development filings. Upon notice and written approval of the Town, authorization from Developer, and payment of the appropriate Water Court Transfer Fee, if any, said credit may also be utilized within the Project to offset increased demands, if any, which are not currently projected.



TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Avi S. Rocklin  
Johnstown Town Attorney

**AGENDA ITEM 7**

**TOWN MANAGER  
REPORT**



# TOWN OF JOHNSTOWN

## MEMORANDUM

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TO: Honorable Mayor and Town Council Members

FROM: Matt LeCerf, Town Manager

DATE: July 1, 2019

CC: Town Staff  
Local Media

SUBJECT: Departmental Report

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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):

- 07/01/2019 – Regular Town Council Meeting
- 07/08/2019 – Work Session (Sewer)
- 07/15/2019 – Regular Town Council Meeting
- 07/22/2019 – Work Session (None Planned)

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### **Police Department**

#### ***Training:***

- *Lidar/Radar Training* – Officers Olds and Cygan received Lidar (Light Imaging Detection and Ranging) and radar speed certification training.
- *Executive training* – Chief Phillips attended the Colorado Association of Chiefs of Police annual conference. Topics covered were data challenges at the intersection of behavioral health and criminal justice, new generation policing: Hiring, Bias and Retention/Psychological fitness for duty, Cross cultural communication, and Current trends in emotional health of law enforcement and possible mitigation strategies.

#### ***Community Policing, Outreach & Miscellaneous Items:***

- *Shred event* – JPD hosted the annual shred event on June 22. A total of 198 residents took advantage of this free event and discarded five (5) tons of paper to be recycled.

#### **Administration, Finance, & Planning**

- *WCR 50 and LCR 3 DOLA Presentation* – The Town Manager will travel to Rifle on July 16<sup>th</sup> for the presentation before the DOLA Advisory Committee to present the application for the WCR 50 and LCR 3 street improvement project. This grant if awarded could be

## **The Community That Cares**

for as much as \$1 million and would provide necessary improvements to our traffic network.

- *Utility Accounts Updates* – Staff is working to update the utility accounts with current phone numbers and contact information so that we can implement a shut-off call program. The shut-off call program will assist us in helping our customers avoid the stress and inconvenience of having their water service discontinued for non-payment, while increasing efficiencies for the Town.
- *Fund Structure* – The funds and the chart of accounts for the 2020 Budget have been restructured and are in the process of being reviewed before they are entered and mapped in Caselle.
- *2018 Audit* – The 2018 Audit is in its final stages and the draft financials are being prepared and reviewed by the auditors. We do expect that we will meet the July 31<sup>st</sup> deadline for the State.
- *GIS Program* – A Contract for Professional Services was executed with InVision GIS, LLC, a Northern Colorado company, to kick off the development of the Town's GIS program. This beginning stage of the program should produce up-to-date base mapping such so that the Town can produce updated Town Limits, Zoning, and other maps. Over time other projects may be added to geo-link documents, locate and identify utilities and Town assets, and for planning and informational purposes.
- *Planning Staff* – Dependent upon approval of the proposed budget amendment, the Planning & Development Director has posted the position for a Planner I / II to join Town Staff and help meeting our community planning needs.
- *CML Conference* – Mayor Lebsack, Councilmember Tallent, and Matt attended the 2019 CML Conference. Good sessions and networking opportunities were the focus of this year's event that brings elected officials and municipal staff together to continue building great communities.

## **Public Works Department**

### ***Streets, Stormwater, & Parks***

- *Play grounds* – The playground at the Town Lake, Hays Park, and Aragon had engineered wood fiber chips (ADA compliant) added to play ground for safety.
- *Signs* – Chevrons were installed on Parish between Aragon Park and the library showing road merge.
- *Overlay project* – Asphalt specialties has started the overlay project. Concrete work has been the focus right now. ADA ramps are being replaced. Milling is scheduled to start on June 26<sup>th</sup>.
- *Road grading* – 12 miles of road grading has been completed. This has become a weekly maintenance due to the increase in traffic and the wet weather.
- *Road survey* – Survey is underway. We are on schedule to get a report back in front of Town council by end of September.
- *Drainage* – All drainage structures were clean after storm. Looked at drainage issues at Fremont and Estes. Will be looking to improve drainage in the 2020 budget year.

### ***Water & Wastewater***

- *Water plant* - Plant has seen an increase in daily flows. We are not seeing peak demand yet, and we can thank Mother Nature for watering the grass for us. We are pulling water from both reservoirs. Crews are monitoring for the potential for the rise of Geosmin. This



is an organic compound with a distinct earthy flavor and aroma produced by certain bacteria Crew will be adding powdered activated carbon once detection has started. South fence is being installed at water plant. This will completely enclose the plant and help to keep out trespassers and vandals.

- *Plant improvements* – Staneck has completed the saturator and the removal of old piping. Fine tuning of actuators and small punch list is all that remains. Improvement should be at 100% by week of the July 1<sup>st</sup>. Final cost of this project went over by \$5,331.92 for the addition of surge protectors on the VFD's, but it was still within the budget as approved by the Council for the entire project.
- *Cemetery* – Crews have the cemetery looking great.
- *Central Wastewater Plant Items* – We are working on design phase of the aeration project at the central plant. This project was budgeted for 2019 to add aeration to the lagoons to help with mixing which provides added oxygen for suspended solids and ammonia removal.
  - Effluent sample pump at central plant has been repaired, crews can get on line monitors working which is required by the state.
- *Lowpoint* – Fan press is working well we are averaging about 20 tons per week of sludge removal as opposed to 320 tons of liquid per week going from one plant to another. Sludge hauling is being done by Veris Environmental.
- *Lift stations* – Quarterly maintenance of our lift stations has been completed. All grit and sediment has been removed.

**AGENDA ITEM 10A**

**New Hotel & Restaurant  
Liquor License**

**Cheba Hut Investment Company Inc.**

**(Public Hearing)**

\*NEW LIQUOR LICENSE PUBLIC HEARING PROCEDURE –

1. Open public hearing.
2. Receive information from staff.
3. Receive information from applicant.
4. Receive information from “parties in interest.” Parties in interest may also cross-examine the applicant.

(Parties in interest include adult residents of the designated neighborhood, the owner or manager of any business located within the designated neighborhood and the representative of any school within 500 feet of the proposed license. The representative of any organized neighborhood group within the designated neighborhood may present evidence, but may not cross-examine witnesses.)

5. Discretionary: Receive information from “others.” *(Only if the testimony would aid Council in considering the application.)*
6. Additional questions from Council, if any.
6. Close the public hearing. *(No more questions from Council.)*
7. Discussion and deliberation among Council.
8. Make a decision and/or motion from Council.

SUGGESTED MOTIONS

For Approval: I move to approve the Application for a Hotel & Restaurant License for Cheba Hut Investment Company Inc.

For Denial: I move to deny approval of the Application for a Hotel & Restaurant License for Cheba Hut Investment Company Inc.

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** July 1, 2019

**ITEM NUMBER:** 10A

**SUBJECT: \*Public Hearing** – Cheba Hut Investment Company, Inc. - New Hotel and Restaurant License

**ACTION PROPOSED:** Consider Issuance of a New Hotel and Restaurant License

**PRESENTED BY:** Town Clerk, Town Attorney

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**AGENDA ITEM DESCRIPTION:** This item is a public hearing to receive comments regarding the proposed new Hotel and Restaurant License for Cheba Hut Investment Company, Inc. DBA Cheba Hut, located at 4948 Thompson Parkway, Johnstown. When approving or denying an application, the Council acts as the local licensing authority and must consider if the reasonable requirements of the defined neighborhood are not presently being met by existing establishments, the desires of the adult inhabitants, and the number, type and availability of other similar liquor establishments located in or near the petitioned neighborhood as well as the moral character of the applicants.

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**LEGAL ADVICE:** The Town Attorney has reviewed the documents submitted and will be available at the meeting to answer questions.

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**FINANCIAL ADVICE:** The applicant has paid all applicable fees for both the State and the Town.

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**RECOMMENDED ACTION:** Consider issuance of a new Hotel and Restaurant License for Cheba Hut.

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**SUGGESTED MOTION:**

**For Approval:** I move to approve the issuance of a Hotel and Restaurant License for Cheba Hut.

**For Denial:** I move to deny the issuance of a new Hotel and Restaurant License for Cheba Hut.

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**Reviewed:**

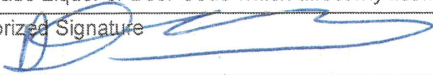
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**Town Manager**

# **Liquor License Application**

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<b>Name</b> Cheba Hut Investment Company Inc.	<b>Type of License</b> Hotel & Restaurant	<b>Account Number</b> N/A New Application
7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):		
(a) Been denied an alcohol beverage license?		<input type="checkbox"/> <input checked="" type="checkbox"/>
(b) Had an alcohol beverage license suspended or revoked?		<input type="checkbox"/> <input checked="" type="checkbox"/>
(c) Had interest in another entity that had an alcohol beverage license suspended or revoked?		<input type="checkbox"/> <input checked="" type="checkbox"/>
If you answered yes to 8a, b or c, explain in detail on a separate sheet.		
9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.		<input type="checkbox"/> <input checked="" type="checkbox"/>
10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?		<input type="checkbox"/> <input checked="" type="checkbox"/>
or Waiver by local ordinance? <input type="checkbox"/> <input type="checkbox"/> Other: _____		
11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? <b>NOTE:</b> The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		<input type="checkbox"/> <input type="checkbox"/> N/A
12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? <b>NOTE:</b> The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		<input type="checkbox"/> <input type="checkbox"/> N/A
13a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016?		N/A <input type="checkbox"/> <input type="checkbox"/>
13b. Are you a Colorado resident?		<input checked="" type="checkbox"/> <input type="checkbox"/>
14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any <u>current</u> financial interest in said business including any loans to or from a licensee. See Attached Supplement for Explanation		<input checked="" type="checkbox"/> <input type="checkbox"/>
15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement? <input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) _____		<input type="checkbox"/> <input type="checkbox"/>
a. If leased, list name of landlord and tenant, and date of expiration, <b>exactly</b> as they appear on the lease:		
Landlord Johnstown Plaza, LLC	Tenant Cheba Hut Investment Company, Inc.	Expires 10/2028
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16.		<input type="checkbox"/> <input checked="" type="checkbox"/>
c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11". See Attached Diagram		
16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.		
Last Name 1st Bank of Colorado	First Name N/A	Date of Birth FEIN or SSN Interest/Percentage None
Last Name N/A	First Name	Date of Birth FEIN or SSN Interest/Percentage
<b>Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.</b>		
17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises: Has a local ordinance or resolution authorizing optional premises been adopted?		N/A <input type="checkbox"/> <input type="checkbox"/>
Number of additional Optional Premise areas requested. (See license fee chart) _____		
18. Liquor Licensed Drugstore (LLDS) applicants, answer the following: (a) Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise? If "yes" a copy of license must be attached.		N/A <input type="checkbox"/> <input type="checkbox"/>
19. Club Liquor License applicants answer the following: <b>Attach a copy of applicable documentation</b>		N/A <input type="checkbox"/> <input type="checkbox"/>
(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?		<input type="checkbox"/> <input type="checkbox"/>
(b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?		<input type="checkbox"/> <input type="checkbox"/>
(c) How long has the club been incorporated?		<input type="checkbox"/> <input type="checkbox"/>
(d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?		<input type="checkbox"/> <input type="checkbox"/>
20. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following: (a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)		N/A <input type="checkbox"/> <input type="checkbox"/>

Name <b>Cheba Hut Investment Company Inc.</b>		Type of License <b>Hotel &amp; Restaurant</b>	Account Number <b>N/A -- New Application</b>	
<b>21. Campus Liquor Complex applicants answer the following:</b> (a) Is the applicant an institution of higher education? <span style="float:right">Yes No</span> <div style="text-align:right">N/A <input type="checkbox"/> <input type="checkbox"/></div> (b) Is the applicant a person who contracts with the institution of higher education to provide food services? <b>If "yes" please provide a copy of the contract with the institution of higher education to provide food services.</b> <span style="float:right"><input type="checkbox"/> <input type="checkbox"/></span>				
<b>22. For all on-premises applicants:</b> a. Hotel and Restaurant, Lodging and Entertainment, Tavern License and Campus Liquor Complex, the Registered Manager must also submit an Individual History Record - DR 8404-I and fingerprint submitted to approved State Vendor through the Vendor's website. See application checklist, Section IV, for details. b. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit a Manager Permit Application <span style="float:right">N/A</span> - DR 8000 and fingerprints.				
Last Name of Manager <b>McCarthy</b>		First Name of Manager <b>Owen</b>		
<b>23. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.</b> <span style="float:right"><input type="checkbox"/> <input checked="" type="checkbox"/></span>				
<b>24. Related Facility - Campus Liquor Complex applicants answer the following:</b> a. Is the related facility located within the boundaries of the Campus Liquor Complex? <span style="float:right">N/A</span> <span style="float:right">Yes No</span> <div style="text-align:right"><input type="checkbox"/> <input type="checkbox"/></div> If yes, please provide a map of the geographical location within the Campus Liquor Complex. If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex. b. Designated Manager for Related Facility- Campus Liquor Complex				
Last Name of Manager <b>N/A</b>		First Name of Manager <b>N/A</b>		
<b>25. Tax Dstraint Information. Does the applicant or any other person listed on this application including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax dstraint issued to them by the Colorado Department of Revenue?</b> <span style="float:right"><input type="checkbox"/> <input type="checkbox"/></span> If yes, provide an explanation and include copies of any payment agreements.				
<b>26. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.</b>				
Name <b>Scott Jennings</b>	Home Address, City & State <b>9, Ft. Collins, CO 80524</b>	DOB <b>4</b>	Position <b>President/Shareholder</b>	%Owned <b>50</b>
Name <b>David Timmons</b>	Home Address, City & State <b>101 St., Denver CO 80211</b>	DOB <b>10/1/1978</b>	Position <b>Shareholder/Treasurer</b>	%Owned <b>40</b>
Name <b>Marc Torres</b>	Home Address, City & State <b>2 Ft. Collins, CO 80524</b>	DOB <b>11/1/1978</b>	Position <b>Shareholder/Secy</b>	%Owned <b>10</b>
Name <b>N/A</b>	Home Address, City & State	DOB	Position	%Owned
Name <b>N/A</b>	Home Address, City & State	DOB	Position	%Owned
** If applicant is owned 100% by a parent company, please list the designated principal officer on above. ** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable) ** If total ownership percentage disclosed here does not total 100%, applicant must check this box: <input checked="" type="checkbox"/> Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.				
Name <b>Cheba Hut Investment Company Inc.</b>		Type of License <b>Hotel &amp; Restaurant</b>	Account Number <b>New Application</b>	
<b>Oath Of Applicant</b>				
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.				
Authorized Signature 		Printed Name and Title <b>David Timmons, Shareholder/Officer</b>		Date <b>4/26/2019</b>
<b>Report and Approval of Local Licensing Authority (City/County)</b>				
Date application filed with local authority <b>April 30, 2019</b>		Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application) <b>July 1, 2019</b>		



The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:			
<input checked="" type="checkbox"/> Fingerprinted <input checked="" type="checkbox"/> Subject to background investigation, including NCIC/CCIC check for outstanding warrants			
That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license (Check One)			
<input type="checkbox"/> Date of inspection or anticipated date _____ <input checked="" type="checkbox"/> Will conduct inspection upon approval of state licensing authority			
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?			Yes No <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?			<input type="checkbox"/> <input type="checkbox"/>
<b>NOTE:</b> The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.			
<input type="checkbox"/> Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?			<input type="checkbox"/> <input type="checkbox"/>
The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. <b>Therefore, this application is approved.</b>			
Local Licensing Authority for		Telephone Number	<input type="checkbox"/> Town, City <input type="checkbox"/> County
Signature	Print	Title	Date
Signature	Print	Title	Date

2-8-2019

Liquor Licenses that Marc Torres has interest in:

**Dreamscape, LLC**

- 104 E. Laurel St.  
Fort Collins, CO. 80524  
Liquor License Number: 4707230  
Interest: 10%
- 925 S. Taft Hill Rd. Ste #6  
Fort Collins, CO. 80521  
Liquor License Number: 4702088  
Interest: 10%

**Pushing Pinners, LLC**

- 1645 8<sup>th</sup> Ave.  
Greeley, CO. 80631  
Liquor License Number: 4704612  
Interest: 10%

**Three Blunts, LLC**

- 638 E. Colfax Ave.  
Denver, CO. 80203  
Liquor License Number: 4704136  
Interest: 10%

**Cheba Hut Investment Company, Inc.**

- Cheba Hut Colorado Blvd  
745 Colorado Blvd. Bldg. B  
Denver, CO. 80206  
Liquor License Number: 4706161  
Interest: 10%
- Cheba Hut Dillon  
265 Dillon Ridge Rd. Unit D  
Dillon, CO. 80435  
Liquor License Number: 4706996  
Interest: 10%
- Cheba Hut Longmont  
635 Main St.  
Longmont, CO. 80501  
Liquor License Number: 4707594  
Interest: 10%
- Cheba Hut Stapleton  
3990 Central Park Blvd. Ste #110  
Denver, CO. 80238  
Liquor License Number: 03-10678  
Interest: 10%

2-8-2019

Liquor Licenses that David Timmons has interest in:

**Dreamscape, LLC**

- 104 E. Laurel St.  
Fort Collins, CO. 80524  
Liquor License Number: 4707230  
Interest: 40%
- 925 S. Taft Hill Rd. Ste #6  
Fort Collins, CO. 80521  
Liquor License Number: 4702088  
Interest: 40%

**Pushing Pinners, LLC**

- 1645 8<sup>th</sup> Ave.  
Greeley, CO. 80631  
Liquor License Number: 4704612  
Interest: 40%

**Three Blunts, LLC**

- 638 E. Colfax Ave.  
Denver, CO. 80203  
Liquor License Number: 4704136  
Interest: 40%

**Cheba Hut Investment Company, Inc.**

- Cheba Hut Colorado Blvd  
745 Colorado Blvd. Bldg. B  
Denver, CO. 80206  
Liquor License Number: 4706161  
Interest: 40%
- Cheba Hut Dillon  
265 Dillon Ridge Rd. Unit D  
Dillon, CO. 80435  
Liquor License Number: 4706996  
Interest: 40%
- Cheba Hut Longmont  
635 Main St.  
Longmont, CO. 80501  
Liquor License Number: 4707594  
Interest: 40%
- Cheba Hut Stapleton  
3990 Central Park Blvd. Ste #110  
Denver, CO. 80238  
Liquor License Number: 03-10678  
Interest: 40%

2-8-2019

Liquor Licenses that Scott Jennings has interest in:

**Dreamscape, LLC**

- 104 E. Laurel St.  
Fort Collins, CO. 80524  
Liquor License Number: 4707230  
Interest: 50%
- 925 S. Taft Hill Rd. Ste #6  
Fort Collins, CO. 80521  
Liquor License Number: 4702088  
Interest: 50%

**Pushing Pinnars, LLC**

- 1645 8<sup>th</sup> Ave.  
Greeley, CO. 80631  
Liquor License Number: 4704612  
Interest: 50%

**Three Blunts, LLC**

- 638 E. Colfax Ave.  
Denver, CO. 80203  
Liquor License Number: 4704136  
Interest: 50%

**Cheba Hut Investment Company, Inc.**

- Cheba Hut Colorado Blvd  
745 Colorado Blvd. Bldg. B  
Denver, CO. 80206  
Liquor License Number: 4706161  
Interest: 50%
- Cheba Hut Dillon  
265 Dillon Ridge Rd. Unit D  
Dillon, CO. 80435  
Liquor License Number: 4706996  
Interest: 50%
- Cheba Hut Longmont  
635 Main St.  
Longmont, CO. 80501  
Liquor License Number: 4707594  
Interest: 50%
- Cheba Hut Stapleton  
3990 Central Park Blvd. Ste #110  
Denver, CO. 80238  
Liquor License Number: 03-10678  
Interest: 50%

Liquor Licenses Scott Jennings owns by himself:

**Toasty Mountain, LLC**

- The Still Whiskey Steaks

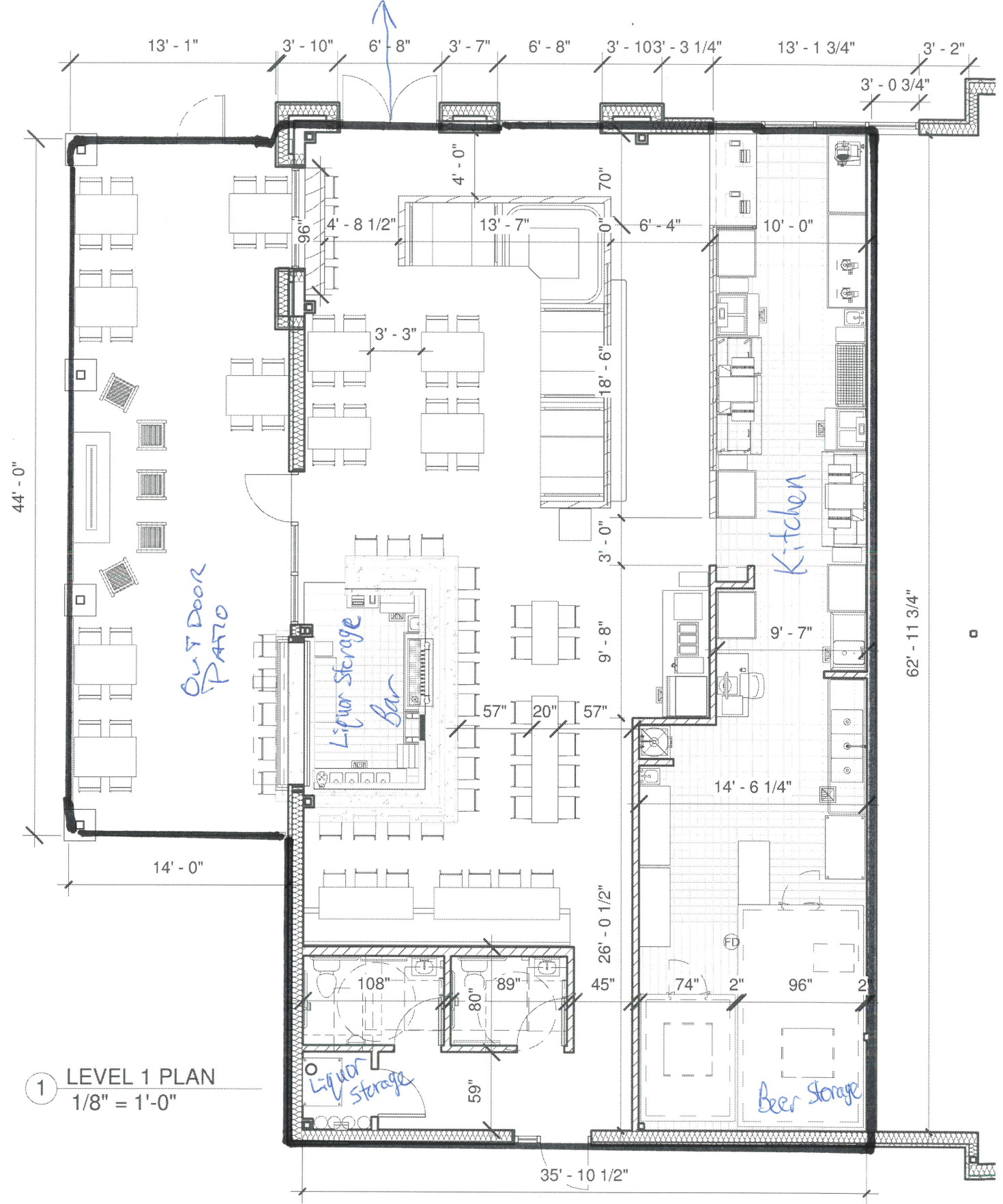
151 N College Ave.

Fort Collins, CO. 80524

Liquor License Number: 4706815

Hotel and Restaurant

Entrance



1 LEVEL 1 PLAN  
1/8" = 1'-0"

# **Results of the Liquor Licensing Survey**



June 19, 2019

RESULTS OF THE LIQUOR LICENSE SURVEY REGARDING: **Cheba Hut**  
 4948 Thompson Parkway  
 Johnstown, CO 80534

Applicant: Cheba Hut Investment Company  
 Purpose: Application for a Hotel and Restaurant License

**ISSUE:** A petition was circulated to determine if the needs of the neighborhood and desires of the inhabitants were or were not being presently met by existing similar alcoholic beverage outlets. Those in favor of Cheba Hut being granted a Hotel and Restaurant Liquor License indicated by checking the “Favor – YES” column of the signature sheet and those opposed checked the “Oppose - NO” column. The results were as follows:

Favor “YES”		Oppose “NO”		<u>TOTAL SIGNATURES</u>
97%	92	3%	3	95

**SURVEY STATISTICS**

	Favor “YES”		Oppose “NO”		TOTAL
Business Survey Results	100%	25	---	0	25
Residential Survey Results	96%	67	4%	3	70

*Percentages in this report have been rounded to the nearest whole number.*

	BUSINESS	RESIDENTIAL	TOTAL
No Response	0	240	240
Declined to Participate	8	25	33
Not Qualified to Sign	10	1	11
Disqualified	0	0	0
“No” Signatures	0	3	3
“Yes” Signatures	25	67	92
TOTAL CONTACTS & ATTEMPTS	43	336	379



## **SURVEY STATISTICS** Cheba Hut

>Number of Businesses and Residents Contacted: 379 Attempts – 240 No Response = 139  
>Business Survey Participation Rate: 25 Signatures/ 33 Qualified Contacts = 76%  
>Residential Survey Participation Rate: 70 Signatures/ 95 Qualified Contacts = 74%  
>Percentage of Residents Home During Survey: 96 Contacts/ 336 Attempts = 29%

<b><u>REASONS FOR OPPOSITION SIGNATURES</u></b>		<b><u>REASONS FOR DECLINING TO PARTICIPATE</u></b>	
Enough / Too Many	2	Too Busy	12
<u>No Reason</u>	<u>1</u>	Against Company Policy	8
<b>Total</b>	<b>3</b>	Not Interested	8
		<u>Don't Sign Any Petitions / Surveys</u>	<u>5</u>
		<b>Total</b>	<b>33</b>
		<b><u>CONTACTS NOT QUALIFIED TO SIGN</u></b>	
		Owner / Manager Unavailable	10
		<u>Non-Resident</u>	<u>1</u>
		<b>Total</b>	<b>11</b>

## **PETITION METHODOLOGY**

- Survey Date and Times:

Residential:	Saturday	June 15, 2019	12:00 pm – 5:00 pm
Residential:	Sunday	June 16, 2019	12:00 pm – 5:00 pm
Business:	Wednesday	June 19, 2019	10:00 am – 1:00 pm

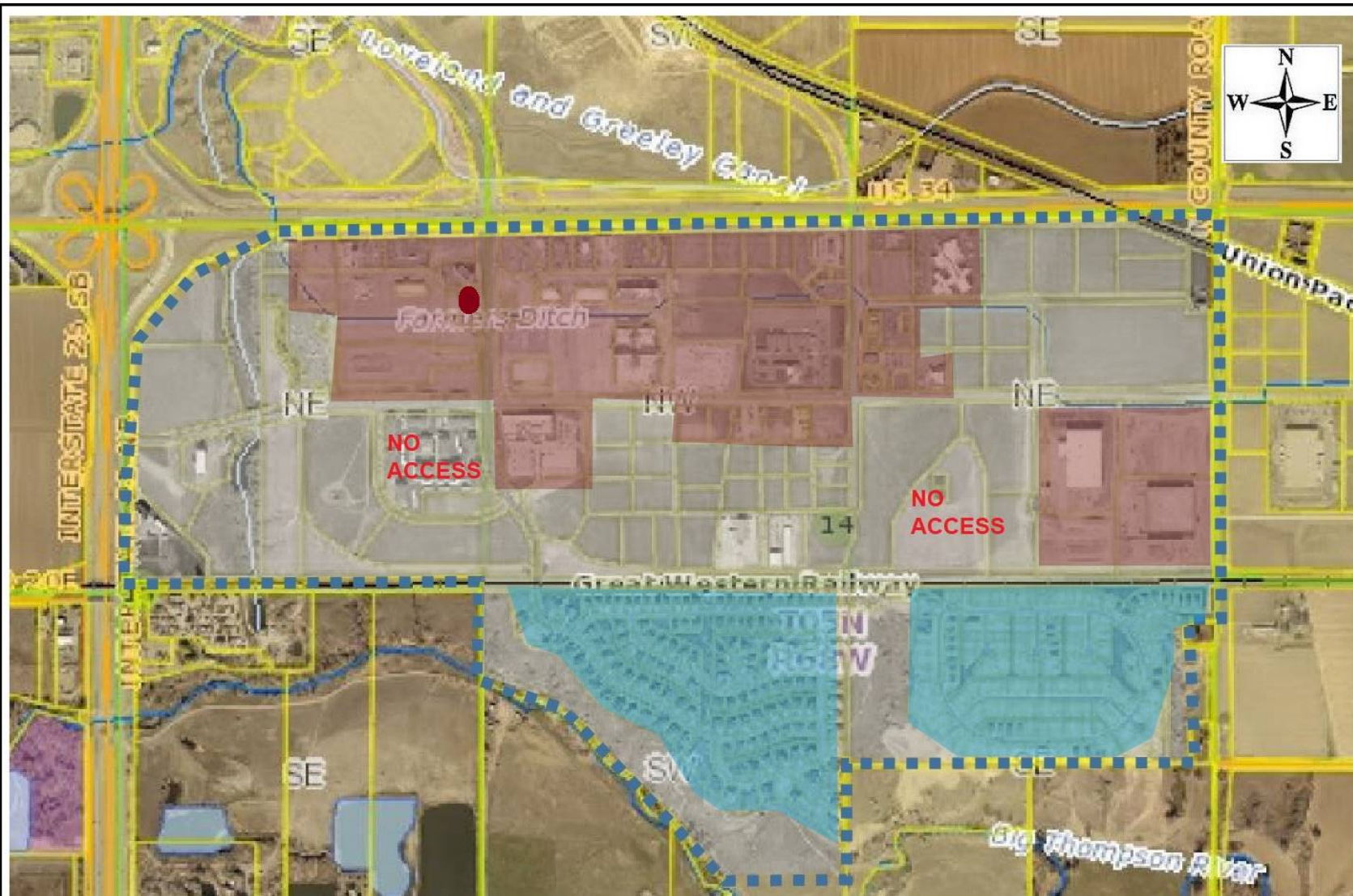
- Survey Areas: Circulators started in areas closest to the proposed licensed site and obtained signatures throughout the boundary area. Please see attached map.
- Circulators of the Survey: There was one circulator for this survey. Prior to the start of the survey, the circulator was briefed on the type of liquor license application, the areas to be surveyed and reminded to remain unbiased in his approach to residents and business people. The circulator had with him a face sheet with the applicant business name, location and hearing information, instructions, and the petition/survey issue along with signature sheets and a map of the proposed location. The circulator used tally sheets to record all contacts, attempts and reasons for opposition signatures and refusals. Upon conclusion of the survey, the circulator signed notarized affidavits of circulation. The original survey packets were pre-filed with the Johnstown City Clerk's Office.

Report prepared and respectfully submitted by,



Eva L. Garretson  
Liquor Licensing Professionals, LLC

## **Map of area petitioned**



## CHEBA HUT - Neighborhood

4948 Thompson Parkway ●  
Johnstown, CO 80534

APPLICATION FOR A HOTEL &  
RESTAURANT LIQUOR LICENSE

 BUSINESS  
AREAS  
COVERED  
IN SURVEY

 RESIDENTIAL  
AREAS  
COVERED  
IN SURVEY



SURVEY DATES: JUNE 15, 16, & 19, 2019

# **Police Report**

**TOWN OF JOHNSTOWN POLICE DEPARTMENT**

**Information 3.2% Beer or Liquor Application**

- Name and address of Applicant} Cheba Hut Investment Company Inc.  
406 N. College Avenue  
Ft. Collins, CO 80524
1. Trade Name and Address} Cheba Hut  
4948 Thompson Parkway  
Johnstown, CO 80534
2. Date of Application: 04/30/2019
3. Type of Application: Hotel and Restaurant License
4. Documents Accompanying Application
- A. Local and State License Fees} Submitted with application
  - B. Evidence of Correct Zoning} CBD
  - C. Building Plans and or Sketch of Interior} N/A
  - D. Distance from School as per State} N/A
  - E. Deed or Lease or Assignment of Lease or Ownership} Lease
5. Evidence of Public Notice
- A. Posting of Premises} Posted June 13, 2019
6. Legal Publication } Johnstown Breeze June 20, 2019
7. Investigation: Police Department Case#}
- A. Applicant has made application for a new Hotel and Restaurant License.
  - B. Background Investigation: – CBI and FBI have processed the background investigation  
There is nothing in the background that would prohibit issuance of the liquor license
8. Findings of fact:
- A. The required fees were submitted.
  - B. It is my recommendation the Hotel and Restaurant License be approved.

  
CHIEF OF POLICE

  
DATE

**AGENDA ITEM 10B**

**Public Hearing  
(I-25 Gateway Center Filing #4 PUD  
Amendment No. 2)**

**(Ordinance No. 2019-163  
First Reading)**

\*PUBLIC HEARING PROCEDURE –Amendment to the I-25 Gateway Center Filing  
No. 4 PUD Outline Development Plan

1. Open public hearing.
2. Receive information from staff.
3. Receive information from applicant.
4. Receive information from public.
  - a. Ask to hear from anyone who supports the Amendment.
  - b. Ask to hear from anyone who opposes the Amendment.
5. Receive rebuttal from applicant. (*Discretionary and only if warranted at the time.*)
6. Additional questions from Council, if any. (*Council may ask questions at any time until the hearing is closed.*)
7. Close the public hearing.
8. Discussion and deliberation among Council.
9. Make a decision and/or motion from Council.

SUGGESTED MOTIONS

For Approval: I move that we approve Ordinance 2019-163, and Ordinance Approving I-25 Gateway Center Filing No. 4 PUD Amendment No. 2, Amending the Outline Development Plan for Property Located in the Southeast Quarter of Section 3, Township 4 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado on 1<sup>st</sup> reading.

Conditional: I move that we approve Ordinance 2019-163, an Ordinance Approving I-25 Gateway Center Filing No. 4 PUD Amendment No. 2, Amending the Outline Development Plan for Property Located in the Southeast Quarter of Section 3, Township 4 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, on 1<sup>st</sup> reading subject to the following modifications.....

For Denial: I move that we deny Ordinance 2019-163.

## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** July 1, 2019

**ITEM NUMBER:** 10B

**SUBJECT:** 1: Public Hearing - I-25 Gateway Center Filing No. 4 PUD Amendment No. 2  
2: 1<sup>st</sup> Reading of Ordinance 2019-163

**ACTION PROPOSED:** 1: Consider the I-25 Gateway Center Filing No. 4 PUD Amendment No. 2, to the Outline Development Plan.  
2: Consider Ordinance 2019-163

**PRESENTED BY:** Kim Meyer, Planning & Development Director

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### AGENDA ITEM DESCRIPTION:

I-25 Gateway Center, LLC, owner of the lots this amendment impacts, requests an amendment to the I-25 Gateway Center Filing No Four PUD Outline Development Plan. The proposed amendment is summarized as follows:

- expands the acreage for “Area C” by 4.46 acres to a total of 16.96 of the 45.46 acres, permitting retail, commercial, and light industrial uses, reducing “Area A” (retail & commercial) by that same acreage to 4.71 acres total (48.6% reduction); and
- the uses in Area C currently include “Storage, Parking and Transportation Uses” – this amendment would add to PUD section D.3.A.4.a: “Outdoors when screened from the street with opaque fencing or wall.” Current PUD language restricts storage to inside enclosed buildings only.

Staff comments and recommendations are found in a memo addressed to the Planning & Zoning Commission dated June 12, 2019 (copy attached), summarized as follows:

1. The PUD amendment request is in keeping with and furthers the Comprehensive Plan goals and objectives.
2. Staff believes this amendment is compatible with the surrounding area and will serve to enhance the viability and developability of these lots, while continuing to protect the view corridor along a vital Town gateway.
3. Staff recommended approval with conditions to clarify the intended changes to the PUD text and address non-substantive text errors.

A public hearing on this project was held on June 12, 2019, by Planning & Zoning Commission – no public input was given. The commission recommended approval by the Town Council with the following conditions:

1. Modification to wording in the PUD document, to ensure the lots along I-25 frontage are excluded from this use change, and that outdoor storage remains compatible in this Town Gateway area, as follows:  
PUD document D.3.A.4.a: “Outdoor storage is permitted on lots in the Gateway Center Filing 4, Block 3, including Lots: 1, 2, 4, 7 and 8 only, as a primary use when fully screened from view of streets and nearby properties, via a functional combination of structures, landscaping, berming, and/or solid fencing or walls that incorporate projections/recesses of 4-5 feet or more at least every 100 feet;” and
2. Spelling errors and minor clarifications to non-substantive “housekeeping” language updates are made, per Staff’s recommendations.

*These conditions have been satisfied.*

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**LEGAL ADVICE:** The Town Attorney has reviewed the amended PUD.

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**FINANCIAL ADVICE:** No impact anticipated.

---

**RECOMMENDED ACTION:** Consider Approval of Amended PUD, as presented.

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**SUGGESTED MOTIONS:**

**Approval:** I move that we approve Ordinance 2019-163, and Ordinance Approving I-25 Gateway Center Filing No. 4 PUD Amendment No. 2, Amending the Outline Development Plan for Property Located in the Southeast Quarter of Section 3, Township 4 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado on 1<sup>st</sup> reading.

**Conditional:** I move that we approve Ordinance 2019-163, an Ordinance Approving I-25 Gateway Center Filing No. 4 PUD Amendment No. 2, Amending the Outline Development Plan for Property Located in the Southeast Quarter of Section 3, Township 4 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, on 1<sup>st</sup> reading subject to the following modifications.....

**Denial:** I move that we deny Ordinance 2019-163.

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**Reviewed:**

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**Town Manager**

# **Planning and Zoning Information**

## **PLANNING & ZONING COMMISSION**

Wednesday, June 12, 2019

7:00 P.M.

### **REGULAR MEETING**

#### **Agenda**

- I. Call to Order
- II. Roll Call
- III. Public Comments regarding items not on the Agenda (may be limited to 3 minutes each)
- IV. Public Hearings:
  - a. I-25 Gateway Center PUD, Amendment No. 2
- V. New Business
  - a. Approval of Minutes of May 22, 2019
- VI. Department Report
- VII. Commissioner Reports and Comments
- VIII. Adjourn

**PLANNING & ZONING COMMISSION  
AGENDA MEMORANDUM**

**ITEM:** Amendment to I-25 Gateway Center PUD

**PROJECT:** I-25 Gateway Center PUD Amendment No 2

**LOCATION:** West of I-25 / North of Hwy 60

**APPLICANT:** Vogel & Associates, on behalf of Gateway Owners, LLC (owner)

**STAFF:** Kim Meyer, Planning & Development Director

**HEARING DATE:** June 12, 2019

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**RELEVANT MUNICIPAL CODE SECTIONS (EXCERPTS) – See Attachment A**

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**EXECUTIVE SUMMARY**

The Town of Johnstown is considering a request for an amendment to the text and map of the I-25 Gateway Center PUD. The amendment will:

- expand the acreage for “Area C” by 4.46 acres to a total of 16.96 of the 45.46 acres, permitting retail, commercial, and light industrial uses, reducing “Area A” (retail & commercial) by that same acreage to 4.71 acres total (48.6% reduction).

		Current Acreage	Proposed Acreage
Area A	Retail/Commercial	9.17	*4.71 (-4.46)
Area B	All A + Light Industrial	13.96	13.96
Area C	All A & B + Light Industrial	12.50	*16.96 (+4.46)
Streets/ROW		6.28	6.28
Outlots – LS & Detention		3.73	3.73
TOTAL		45.46	45.46

- the uses in Area C currently include “Storage, Parking and Transportation Uses” – the amendment would add “D.3.A.4.a Outdoors when screened from the street with opaque fencing or wall.” Current PUD language restricts storage to inside enclosed buildings only.

Note: Staff has clarified with the Applicant that the intent is not to expand outdoor storage to the Area C lots along the I-25 corridor, but only to permit this use internally, between Gateway Drive and Gateway Circle. Proposed rewording to ensure this is accommodated in Staff’s recommended motion to the Commission.

See Attachment B for Vicinity Map & Attachments C & D for Amendment Materials for more detailed information.

## PROPERTY DATA

<b>Location:</b>	Multiple lots North of WCR 48, East of I-25 in the Gateway Center Subdivision
<b>Property Size:</b>	45.46 Acres
<b>Current Zoning/Land Use(s):</b>	PUD-B - "I-25 Gateway Center Filing No Four"
<b>Surrounding Zoning/Land Uses:</b>	North: Weld Co "A" Agriculture zone district South: PUD-MU – vacant (development proposal pending) East: I-25 and PUD-MU – "Vista Commons," vacant West: Gateway Commercial (GC) zone district – light industrial
<b>Comprehensive Plan Designation:</b>	Gateway Center

## BACKGROUND

Annexation: Gateway Center Annexation No 2, 02/05/1996, 159.19 acres  
Subdivision: I-25 Gateway Center Filing No Four, 03/14/2003, 45.46 acres  
Zoning: Gateway zone district I-25 Gateway Center, 02/05/1996  
PUD-B Overlay "I-25 Gateway Center Filing No Four PUD," 10/21/2002, (Ord 2002-699 / Rec #3010629)

This PUD overlay district was approved in 2002. The PUD documents created three use areas – A, B, and C. Area A (9.17 ac.) permits retail and commercial uses, further clarified in the document; Area B (13.96 ac) permits Uses in A, in addition to select light industrial uses; Area C (16.96 ac.) permits all uses in A and B, plus an expanded list of light industrial uses.

The overall Gateway Center subdivision created 23 buildable lots ranging from 0.87-2.49 acres and one 3.473 acre non-buildable outlot, likely created to handle stormwater detention for the whole subdivision. To date, Staff identified six of these lots that have been/are being developed and built upon, with the remaining 17 still vacant.

## COMPREHENSIVE PLAN REVIEW & ANALYSIS

**Goal CF-3 (Community Form).** *An enhanced character of development and overall image.*

**Screening.** *Provide screening of service or loading areas, or other non-essential site features, with landscaping, screen walls, fences, or other means between incompatible land uses or site areas.*

**Outdoor Storage.** *Enforce existing Town ordinances regarding outdoor storage of junk, machinery, etc. Require all permitted outdoor storage to be screened from public view.*

Staff interprets this section to accommodate outdoor storage, as long as it is well-screened from adjoining/nearby properties and streets. Provided that development of outdoor storage is brought forth to the Town in a form consistent with the Concept Plan (See Attachment D) provided by the Applicant, Staff believes this type of well-screened and designed development could be considered compatible with this Gateway Center area. As Area C also extends along six lots in the northern portion of the PUD, immediately adjacent to I-25 and that vital view

corridor, Staff is proposing modified language to the PUD that would ensure the Applicant's intent and Staff's requirement to not permit outdoor storage in this corridor are appropriately represented in the final PUD document(s).

***Gateway Center (Chapter 3 inset)***

*Gateways are the recognizable entries to the community and are typically associated with the local highway and arterial corridors. Gateway locations provide opportunities to both identify the community and to promote the desired community image.*

*Gateway Centers mark the entryways into the Town of Johnstown. As denoted on the Land Use Framework Map, these Gateway Centers are intended to provide regional- serving retail and office uses, as well as an assortment of medium to high density housing options. Typically, the average residential density within and around the center area is 8 to 12 dwelling units per gross acre.*

*The mixed-use economic center could include larger economic anchors including well designed big box retail. Commercial square footage will generally exceed 200,000 square feet. The center could also include a central park or plaza. Gateway Centers will typically be a minimum of 40 acres, and should include accompanying design guidelines to ensure developments are befitting of the Town of Johnstown. Design elements should include facades treatments, landscaping, plazas, public art and other gateway elements.*

*Desirable Gateway Centers include I-25 interchanges and major intersections along US 34 and SH60. Gateway Centers should link to regional transit opportunities and include locations for park-and-ride and BRT facilities.*

This PUD is aptly titled the I-25 Gateway Center as it is placed firmly on a hard corner of the I-25 and Hwy 60 interchange – Johnstown's primary highway interchange from I-25. Staff believes this area is a vital contributor to Johnstown's image and identity in the region, which is likely why much of the land immediately adjacent to the I-25 corridor in this PUD was originally designated for retail and lighter-intensity commercial and light industrial uses. The proposed amendment will only affect the more internal lots between Gateway Drive and Gateway Circle, as illustrated on the Concept Plan drawing, leaving the WCR48 and I-25 frontages free of outdoor storage as a primary permitted use.

**MUNICIPAL CODE REVIEW & ANALYSIS**

I-25 Gateway Center PUD is the prevailing overlay zoning. The current PUD language has been interpreted to require storage uses be "conducted entirely within an enclosed structure." With the requested text and map changes, outdoor storage would be permitted as a primary use, with full screening from view from nearby properties and streets, such as is illustrated in the Concept Plan.

**APPLICANT REQUEST & RESPONSE**

The Applicant worked with staff to submit information as requested, and discussed and negotiated various elements of the proposal. They provided required application materials that include: proposed PUD amendment language and maps, as well as an "illustrative" concept plan. *(See Attachments C & D)*

The letter submitted with the application indicates that 77% of the lots developed in this overall I-25 Gateway Center (not just the PUD) have included more commercial and light industrial uses, than retail. Hence, the desire to modify several of the Area A lots to Area C, which would provide a wider range of light industrial uses.

## **COMMUNITY / NEIGHBORHOOD RESPONSE**

This public hearing was posted in the Johnstown Breeze on Thursday, May 30, 2019. The Applicant provided stamped addressed envelopes which Staff used to provide a mailed public notice on May 30, 2019, to all property owners within 500 feet of the boundaries of the PUD, informing the immediate neighborhood of this meeting. No neighborhood meeting was required.

As of the date of publication of this Staff Report, no inquiries were received by Staff.

## **ANALYSIS OF THE SITE, PROJECT, AND POTENTIAL IMPACTS**

**Site:** The area of the PUD itself poses no atypical or notable conditions (i.e., topography, geometry, context) that would negatively impact or restrict the ability to reasonably develop and use these lots for the uses listed and proposed in the PUD documents.

The current PUD list of uses provides a wide range of retail, commercial, and light industrial uses that are permitted and accessory in nature. There are no special or conditional uses listed in the PUD.

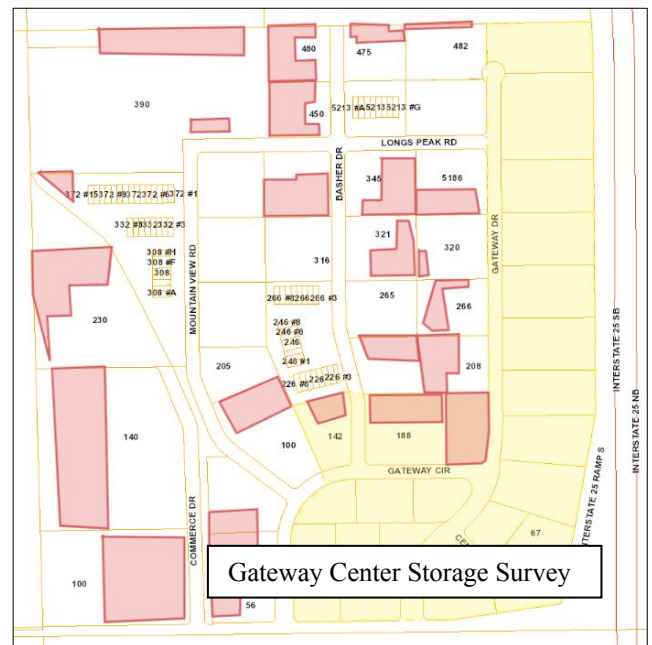
**Project:** The proposed amendment would increase the area for light industrial in the I-25 Gateway Center PUD area by 4.46 acres, as well as allow for outdoor storage as a permitted use by right. As mentioned, the six (6) lots along I-25 (12.914 ac.) are in Area C will be excluded from this use, with language proposed by Staff in the recommended motion.

Staff notes that the existing development in this area is typically more industrial in nature. The extended period of time in which this area has taken to develop, and the amount of vacant land remaining along I-25 may illustrate that retail uses in this subdivision are not appropriate and the PUD is effectively not “zoned” property, in which case an amendment to the PUD may be a logical and functional solution.

The market argument posed by the Applicant is that light industrial, and outdoor storage, is what the market is currently seeking in this area. In Staff’s view, the lack of more immediate development likely has several sales-affective factors, of which this issue may be among them. Additionally, it is possible that with recent development of the Loaf n’ Jug and Subway, that additional retail and more commercial uses may follow suit, with that development serving as a beacon to more retail development that may be less-inclined to pay the higher land and rent prices found in the 2534 area. This unknown and variable factor is often why market conditions and financial considerations rarely factor into changes to zoning – the bigger question becomes... “Is this a logical and desired use for the Town, supported by our Comprehensive Plan, and serving the best and highest use for the Town’s purposes?”

The Comprehensive Plan, as mentioned above, does support outdoor storage, with appropriate screening; and describes the Gateway, with support for high-quality entryways into the Town. Outdoor Storage is permitted in the adjacent & underlying Gateway District – with Sec 16-273 (b) requiring: *“All materials and products stored outdoors shall be fully concealed from view of persons in adjacent residential and commercial districts and public streets by a solid fence or wall up to eight (8) feet in overall height.”*

**Area/Neighborhood:** An informal aerial survey of the entire Gateway Center reveals significant amounts of outdoor storage areas – PUD in yellow / apparent storage areas in red – typically as an accessory use to an office, warehouse or industrial use. Note that the aerials used are Weld County’s, taken in 2018. Staff makes no assertions as to whether these storage areas are currently in compliance with screening, or were included with original approvals.



The lots in this subdivision are larger lots, with long property boundaries. Staff feels any screening should also incorporate projections or recesses at regular intervals to avoid long (>100') corridor effects.

**Traffic/Transportation Impact:** The impact of the proposed amendments would not be anticipated to significantly or adversely affect anticipated traffic volumes, patterns, or systems in the development.

**Infrastructure (Water/Wastewater):** No significant impact anticipated.

**Stormwater Management / Floodplain:** No impact anticipated. Not in a floodplain.

## STAFF SUMMARY

The PUD amendment request is in keeping with and furthers the Comprehensive Plan goals and objectives. Staff believes this amendment is compatible with the surrounding area and will serve to enhance the viability and developability of these lots, while continuing to protect the view corridor along a vital Gateway to the Town.

## STAFF RECOMMENDATION

Approval with Conditions

## RECOMMENDED PLANNING COMMISSION FINDINGS AND MOTIONS

Based on the application received and the preceding analysis, the Planning & Zoning Commission finds that the proposed request for the I-25 Gateway Center PUD, Amendment No 2, furthers the Town’s Comprehensive Plan goals, is compatible with all other applicable Town standards and regulations, and maintains the harmonious relationships stated in the PUD-B purpose, and therefore moves to recommend to the Town Council approval of the proposed PUD amendment, with the following conditions:



1. Modification to wording in the PUD document, to ensure the lots along I-25 frontage are excluded from this use change, and that outdoor storage remains compatible in this Town Gateway area, as follows:  
PUD document D.3.A.4.a: “Outdoor storage is permitted on lots in the Gateway Center Filing 4, Block 3, including Lots: 1, 2, 4, 7 and 8 only, as a primary use when fully screened from view of streets and nearby properties, via a functional combination of structures, landscaping, berming, and/or solid fencing or walls that incorporate projections/recesses of 4-5 feet or more at least every 100 feet;
2. Spelling errors and minor clarifications to non-substantive “housekeeping” language updates are made, per Staff’s recommendations.

#### **ALTERNATE MOTIONS**

A. Motion to Approve with no Conditions: “...and therefore moves to recommend to the Town Council approval of the I-25 Gateway Center PUD Amendment No 2 as presented.”  
*(Staff note: this would allow outdoor storage on nearly 13 acres along I-25 corridor.)*

B. Motion to Deny: “I move that the Commission recommend to the Town Council denial of the I-25 Gateway Center PUD Amendment No 2, with the following findings: the proposed amendment...”

*Examples/options:*

- a. is not in keeping with or furthering the Comprehensive Plan with regard to protecting the Town’s Gateway areas.
- b. introduces a use that the Commission finds incompatible with the surrounding area and the intent of the PUD and the Comprehensive Plan

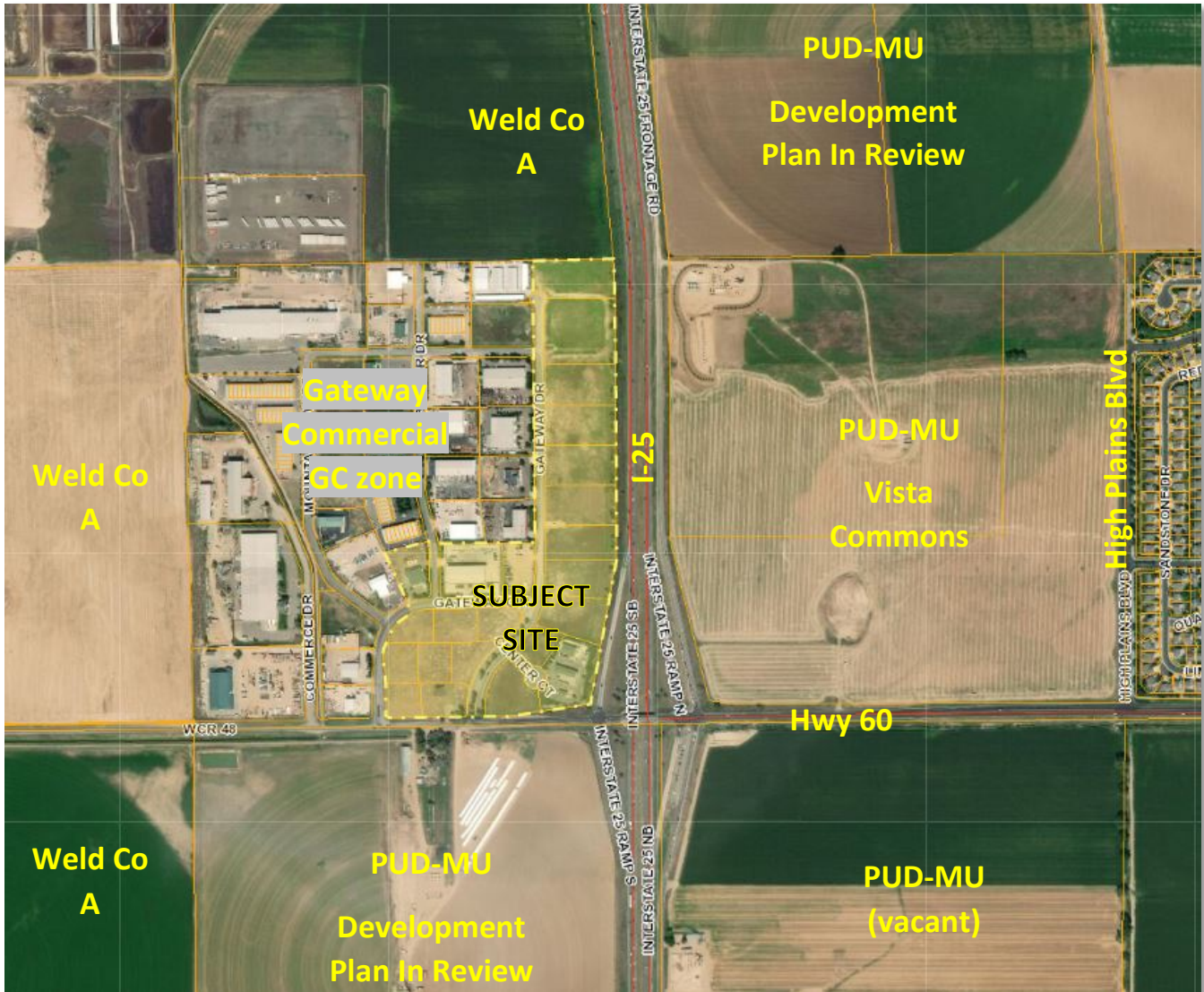
#### **ATTACHMENTS**

	Page	Content
<b>A</b>	7	Municipal Code Excerpts
<b>B</b>	10	Vicinity Map
<b>C</b>	11	Application Materials
<b>D</b>	23	PUD Plan & Illustrative Concept Plan

# ATTACHMENT B

## Vicinity Map

### I-25 Gateway Center Filing No Four PUD PUD Amendment No 2 June 2019



Source: Weld County Assessor - <https://www.co.weld.co.us/maps/propertyportal/>



# ATTACHMENT C



March 20, 2018

Kim Meyer  
Director of Planning & Development  
Town of Johnstown  
450 S Parish Avenue  
Johnstown, CO 80534

Dear Kim,

On behalf of Gateway Owners, LLC, Vogel & Associates is pleased to submit the enclosed I-25 Gateway Center, Filing No. Four – PUD Amendment. As discussed with staff, the intent is amend Area A to provide for both industrial and retail land uses.

Over the past 20 years, 77% of the lots developed within the I-25 Gateway Center has included commercial/light industrial land uses. One retail use consisting of a gas/convenience store has been located at the southeast corner of the project that is located adjacent to I-25 and the interchange. Given the limited access and visibility of the lots located on the western 2/3rds of Area A, retail users and development has not been proposed. Destination retail users continue to locate within the successful commercial/retail development that has been occurring at the intersection of I-25 and State Hwy 34. The market demand for office flex / light industrial lots continues to be more in demand than retail for the I-25 Gateway Center.

To accommodate the demand for office flex/light industrial we are requesting to amend the PUD to permit light industrial within the western 2/3rd of the 6 northern lots within Block 3 located within Area A. This area would be categorized as Area C Land Use. This land use would be consistent with the existing development which has occurred on the north side of Gateway Circle. The remainder of the 6 lots would remain within the Area A land use classification. By keeping a portion of these 6 lots as Area A would retain a Retail/Commercial edge along the west side of Gateway Drive were convenient access and visibility is provided. This has been illustrated on sheet 2 of the PUD Amendment Submittal Package.

To further accommodate the demand for commercial/office flex/light industrial the Design Standards that appear on page 2 off the First PUD Amendment would be amended to include outdoor storage as a principal use when screened from the street with a building, opaque fencing or wall.

Attached please find the first four items listed on the Processing Schedule Gateway District that apply to a PUD Amendment. The remaining 5 items relate to the submittal of site plans for the individual lots within the I-25 Gateway Center, Filing No. Four – PUD.

1 of 2

Land Planning ♦ Landscape Architecture ♦ Real Estate Feasibility ♦ Development Consulting

V: 303.893.4288 F: 303.893-6792 ♦ 475 West 12<sup>th</sup> Avenue, Suite E, Denver, Colorado 80204 ♦ [www.vogelassoc.com](http://www.vogelassoc.com)

We look forward to working with you as this PUD Amendment submittal moves through the Town's submittal and approval process.

Respectfully,

Vogel & Associates, LLC

A handwritten signature in black ink, appearing to read "Jeffrey Vogel". The signature is fluid and cursive, with the first name "Jeffrey" and last name "Vogel" clearly distinguishable.

Jeffrey Vogel, AICP  
Principal

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, CONTAINING 45.457 ACRES.

A) I-25 GATEWAY CENTER, FILING NO. ONE,  
B) OUTLOT "B", I-25 GATEWAY CENTER, FILING NO. TWO, REPLAT "A",  
C) OUTLOT "A", I-25 GATEWAY CENTER, FILING NO. FIVE,  
D) LOT 2, BLOCK 2, LOTS 8 AND 9, I-25 GATEWAY CENTER, FILING NO. SIX.

### D. STANDARDS FOR RETAIL, COMMERCIAL AND LIGHT INDUSTRIAL LAND USES

- E. DEVELOPMENT STANDARDS**
1. LOT SIZE: THERE IS NOT A MINIMUM LOT SIZE
2. BUILDING SETBACKS:

B. THE MINIMUM SETBACK FROM WELD COUNTY ROAD 48 BETWEEN INTERSTATE 25 AND GATEWAY DRIVE IS THIRTY (30) FEET.

C. THE MINIMUM SETBACK FROM ALL OTHER RIGHTS-OF-WAYS IS TWENTY (20) FEET FOR STRUCTURES AND TEN (10) FEET FOR PARKING LOTS.

D. THE MINIMUM SETBACK FROM ALL OTHER PROPERTY LINES IS TEN (10) FEET FOR STRUCTURES AND PARKING LOTS.

3. PARKING STANDARDS

A. REQUIRED OFF-STREET PARKING

#### F. AUXILIARY USE STANDARDS

1. GE

- ## H. LANDSCAPE GUIDELINES

- ## I. ARCHITECTURE GUIDELINES

- ### 1. UNIFYING DESIGN ELEMENTS

LANDSCAPING

1. ENTRY LANDSCAPING: FOR THE TWO (2) ENTRANCES FROM WELD COUNTY ROAD WILL HAVE REDBARK. THESE REDBARK WILL BE LANDSCAPED TO CREATE A SHIELDING APPEARANCE. THIS WILL BE ACCOMPLISHED BY USING THE SAME SPECIES, SIZE AND PROPORTIONS RELATED TO THE QUALITY OF PLANT MATERIALS AND BY USING THE SAME PLANT MATERIALS.

2. STREETSCAPING: PER THE TYPICAL SITE PLAN DRAWINGS, THE OWNER OF EACH SITE IS REQUIRED TO PLANT TREES ALONG ALL STREET FRONTAGES AT A MINIMUM OF FIFTY (50) FEET ON CENTER. THE SPECIES OF TREES TO BE USED ON EACH OF THE DIFFERENT STREETS IS ALSO IDENTIFIED.

3. ALONG HIGHWAY 20: TREES WITH LANDSCAPING INCORPORATING THE SAME SPECIES, SIZES AND PLACEMENT OF PLANT MATERIALS ARE EXISTING ALONG THE ENTIRE DEVELOPMENT FRONTAGE ADJACENT TO THE INTERSTATE.

4. SITE LANDSCAPING: PER THE TYPICAL SITE PLAN DRAWINGS, THE LANDSCAPE TREATMENT OF EACH BUILDING LOCUS BEING CONSIDERED THE USE OF TALL TYPE GRASSES IN FRONT OF THE BUILDING ON THE PROPERTY. IN ADDITION, THE USE OF PLANT MATERIALS OF EACH BUILDING LOCUS MUST BE IDENTICAL.

5. SIGNAGE
- A. TYPES OF SIGNS: THE FOLLOWING FOUR TYPES OF SIGNS ARE ALLOWED:
- 1. PYLON SIGN
  - 2. LARGE RECTANGULAR SIGN (PROPOSED ADJACENT TO INTERSTATE 25)
  - 3. MULTI-TENANT SIGN
  - 4. SINGLE TYPED SIGN
- B. DESIGN
1. FORM: IN CONCEPT, EACH SIGN WILL CONSIST OF A PAIR OF MASSY COLUMN COLUMNS RESTING ON A HORIZONTAL BASE. BETWEEN THE MASSY COLUMNS, THERE SHALL BE A PANEL, ON WHICH SIGNAGE WILL BE DISPLAYED.
2. MATERIALS: EACH SIGN SHALL USE THE SAME MATERIALS IN THE SAME COLOR. THE EXACT MATERIALS AND COLOR SHALL BE DETERMINED WHEN THE FIRST SIGN IS CONSTRUCTED. (SEE CONCEPTUAL DESIGN FOR THIS PROJECT FOR MATERIALS AND COLOR CHOICES IN EACH SIGN.)
3. ARCHITECTURE
- A. FRONT FACADE: FOR THE TYPICAL FRONT AND SIDE ELEVATIONS, FACADES SHALL INCORPORATE HORIZONTAL MATERIALS. SIGN OWNERS ARE ENCOURAGED TO UTILIZE THE MATERIALS AND COLORS USED IN THE SIGN. OWNERS WILL NOT BE ENCOURAGED TO INCORPORATE LOGO OR WORDS BEHIND THE ARCHITECTURAL TREATMENT OF EACH BUILDING'S FRONT ENTRANCE.
- B. REAR FACADE: ALL TYPED SIGN OWNERS SHALL USE WHITE STANDING-GRAM TYPE AND SHALL BE CHASE GRAM TYPE.

1. SHOULD THERE BE A DIFFERENCE BETWEEN THE STANDARDS LISTED IN THIS DOCUMENT AND THOSE LISTED IN 26, ZONING OR CHAPTER 17, SUBDIVISIONS, THE STANDARDS USED IN THIS DOCUMENT WILL RULE.

2. THE INTENT OF THE GUIDELINES (IN SECTIONS 2 THROUGH 5) IS TO ESTABLISH A CONSISTENT AND ATTRACTIVE APPEARANCE FOR THE DEVELOPMENT. THE DEVELOPER AND THE OWNER OF EACH SITE ARE RESPONSIBLE TO DESIGN THE PAD SUBSUD CONSIDERATION OF FACTS THAT NEED TO BE ADDRESSED. THESE GUIDELINES SHALL INTERPRET THE TOWN PLANNER IN A MANNER THAT DEFENDS THE PUBLIC INTERESTS OF THE COMMUNITY. THE TOWN PLANNER'S RESPONSIBILITIES ARE TO DEVELOP AND MAINTAIN THE TOWN PLANNING DEPARTMENT'S POLICY, TO DEVELOP AND MAINTAIN THE TOWN PLANNING DEPARTMENT'S MARKETING STRATEGIES, SITE CONDITIONS AND OTHER VARIABLES TO BE ACCOMMODATED. A FEW OF THE PROJECTS, THE GUIDELINES ARE INAPPROPRIATE AS SUGGESTED BY THE APPLICANT. THEN THE TOWN PLANNER MAY DETERMINE THAT IT IS NOT APPLICABLE (N/A). FOR VERY SMALL PROJECTS, THE TOWN PLANNER MAY WAIVE SOME OR ALL OF THE GUIDELINES.

4475 W. 12th Avenue • Suite 204  
Denver, Colorado 80204  
(303) 863-4288

JOB NO: 80-2867.01  
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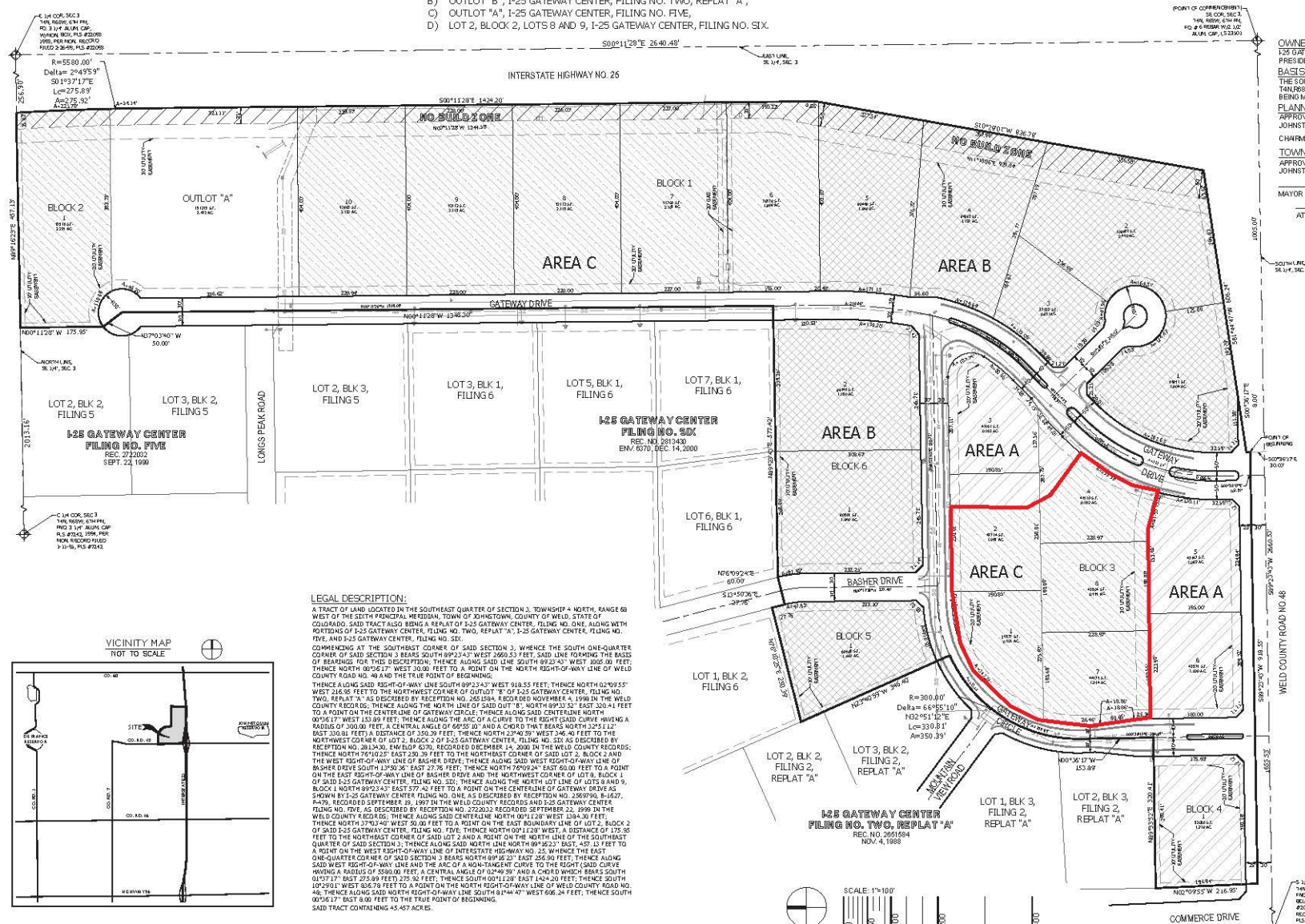


# I-25 GATEWAY CENTER, FILING NO. FOUR-P.U.D AMENDMENT NO. TWO OUTLINE DEVELOPMENT PLAN-FINAL DEVELOPMENT PLAN

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, CONTAINING 45.457 ACRES.

SAID TRACT ALSO BEING A REPLAT OF:

- I-25 GATEWAY CENTER, FILING NO. ONE;
- OUTLOT "B", I-25 GATEWAY CENTER, FILING NO. TWO, REPLAT "A";
- OUTLOT "A", I-25 GATEWAY CENTER, FILING NO. FIVE;
- LOT 2, BLOCK 2, LOTS 8 AND 9, I-25 GATEWAY CENTER, FILING NO. SIX.



OWNERS AND APPLICANT:  
I-25 GATEWAY CENTER LLC, ROBERT C. SAFFELL,  
PRESIDENT & MANAGING MEMBER

BASIS OF BEARINGS:  
THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 3,  
TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN,  
TOWN OF JOHNSTOWN, COLORADO, THIS DAY OF 2019.

PLANNING COMMISSION APPROVAL:  
APPROVED BY THE PLANNING COMMISSION OF THE TOWN OF  
JOHNSTOWN, COLORADO, THIS DAY OF 2019.

CHAIRMAN:  
TOWN BOARD OF TRUSTEES APPROVAL:  
APPROVED BY THE BOARD OF TRUSTEES OF THE TOWN OF  
JOHNSTOWN, COLORADO, THIS DAY OF 2019.

MAYOR  
ATTEST, TOWN CLERK

## LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, SAID TRACT ALSO BEING A REPLAT OF I-25 GATEWAY CENTER, FILING NO. ONE, ALONG WITH PORTIONS OF I-25 GATEWAY CENTER, FILING NO. TWO, REPLAT "A"; I-25 GATEWAY CENTER, FILING NO. FIVE, AND I-25 GATEWAY CENTER, FILING NO. SIX.

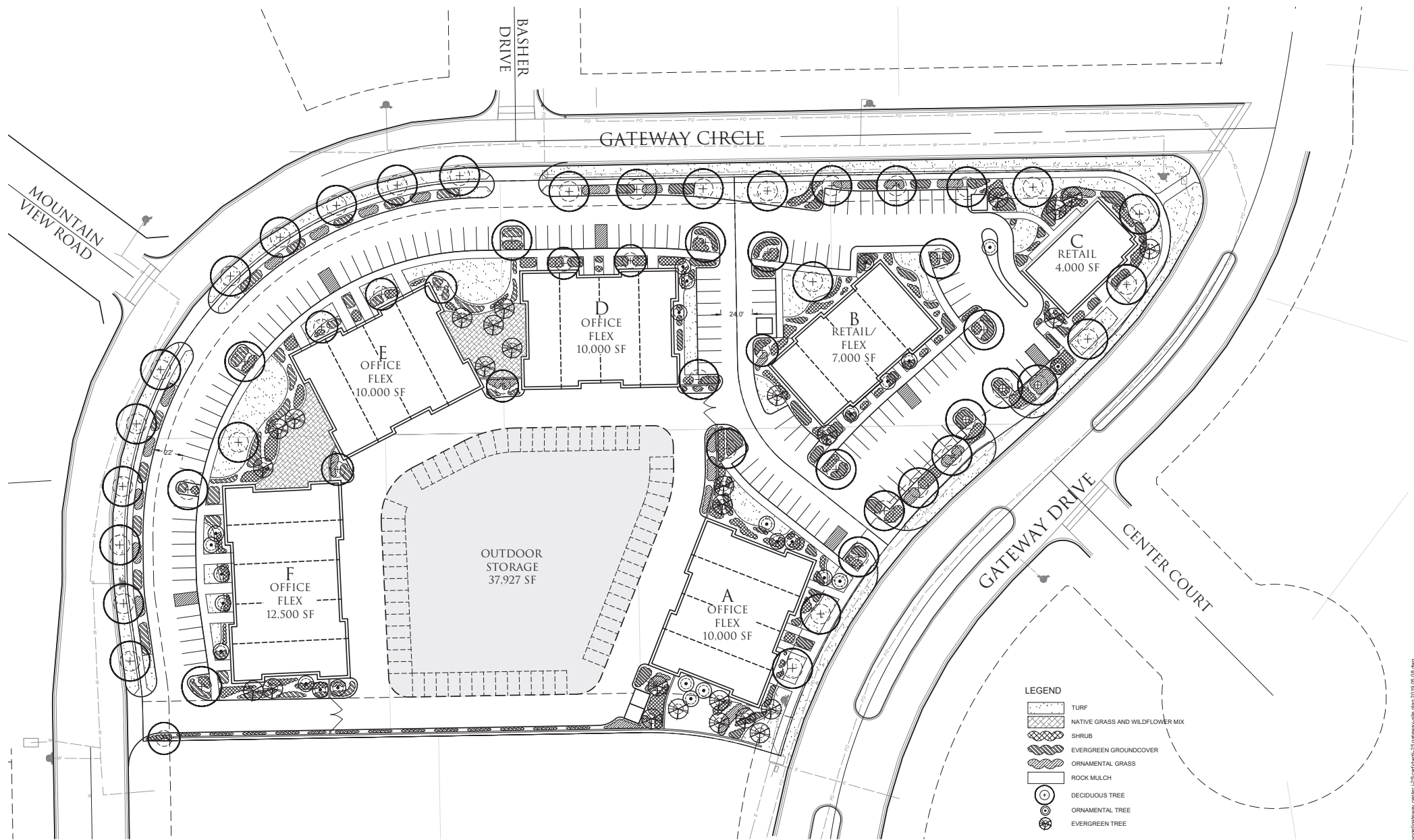
COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 3, THENCE SOUTH 02°49'55" WEST 216.95 FEET TO THE NORTHWEST CORNER OF OUTLOT "B" OF I-25 GATEWAY CENTER, FILING NO. TWO, REPLAT "A", AS DESCRIBED BY RECEPTION NO. 265184, RECORDED NOVEMBER 4, 1998 IN THE WELD COUNTY RECORDS; THENCE ALONG THE NORTH LINE OF SAID OUTLOT "B" NORTH 89°33'52" EAST 302.41 FEET TO A POINT ON THE CENTERLINE OF GATEWAY DRIVE; THENCE ALONG SAID CENTERLINE NORTH 09°16'17" WEST 151.89 FEET; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT (SAID CURVE HAVING A RADIUS OF 300.00 FEET, A CENTRAL ANGLE OF 69°52'30" AND A CHORD THAT BEARS NORTH 22°11'21" EAST 330.91 FEET) A DISTANCE OF 350.39 FEET; THENCE NORTH 2°49'55" WEST 346.40 FEET TO THE NORTHWEST CORNER OF LOT 2, BLOCK 2 OF I-25 GATEWAY CENTER, FILING NO. SIX, AS DESCRIBED BY RECEPTION NO. 261340, ENCL. 670, RECORDED DECEMBER 14, 2000 IN THE WELD COUNTY RECORDS; THENCE NORTH 78°12'23" EAST 130.39 FEET TO THE NORTHEAST CORNER OF SAID LOT 2, BLOCK 2 AND THE WEST RIGHT-OF-WAY LINE OF BASHOR DRIVE; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF BASHOR DRIVE SOUTH 13°30'36" EAST 27.76 FEET; THENCE NORTH 89°12'20" EAST 60.00 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF BASHOR DRIVE AND THE NORTHWEST CORNER OF LOT 8, BLOCK 1 OF SAID I-25 GATEWAY CENTER, FILING NO. SIX; THENCE ALONG THE NORTH LOT LINE OF LOTS 8 AND 9, BLOCK 1 NORTH 89°12'20" EAST 377.45 FEET TO A POINT ON THE CENTERLINE OF GATEWAY DRIVE AS SHOWN BY I-25 GATEWAY CENTER FILING NO. ONE, AS DESCRIBED BY RECEPTION NO. 258790, 8-16-27, 1-1-79, RECORDED SEPTEMBER 28, 1997 IN THE WELD COUNTY RECORDS AND I-25 GATEWAY CENTER, FILING NO. FIVE, AS DESCRIBED BY RECEPTION NO. 272202, RECORDED SEPTEMBER 22, 1999 IN THE WELD COUNTY RECORDS; THENCE ALONG SAID CENTERLINE NORTH 09°16'17" WEST 151.89 FEET TO THE NORTHWEST CORNER OF SAID LOT 2 AND A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 3, THENCE ALONG SAID NORTH LINE NORTH 89°16'22" EAST 457.13 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 25, THENCE ALONG SAID WEST RIGHT-OF-WAY LINE AND THE ARC OF A NON-TANGENT CURVE TO THE RIGHT (SAID CURVE HAVING A RADIUS OF 588.00 FEET, A CENTRAL ANGLE OF 02°49'59" AND A CHORD WHICH BEARS SOUTH 03°17'17" EAST 275.89 FEET, 275.26 FEET; THENCE SOUTH 89°11'28" EAST 144.20 FEET; THENCE SOUTH 10°29'10" WEST 426.79 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD NO. 48, THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE SOUTH 81°44'47" WEST 696.24 FEET; THENCE SOUTH 09°16'17" EAST 8.00 FEET TO THE TRUE POINT OF BEGINNING.

SAID TRACT CONTAINING 45.457 ACRES.

VOGL & ASSOCIATES  
475 W. 12th Avenue - Suite E  
Denver, Colorado 80204-3888  
(303) 863-4238

JOB NO: 80-2867.017.00

PAGE 2 OF 2



# **Ordinance 2019-163**



**.TOWN OF JOHNSTOWN, COLORADO  
ORDINANCE NO. 2019-163**

**AN ORDINANCE APPROVING I-25 GATEWAY CENTER FILING NO. 4 PUD  
AMENDMENT NO. 2, AMENDING THE OUTLINE DEVELOPMENT PLAN  
FOR PROPERTY LOCATED IN THE SOUTHEAST QUARTER OF SECTION  
3, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6<sup>TH</sup> PRINCIPAL  
MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF  
COLORADO**

**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**, I-25 Gateway Center, LLC, a Colorado limited liability company (“Applicant”), submitted an application to amend the outline development plan for Gateway Center Filing No. 4 to modify the land use map to expand “Area C” by 4.46 acres, with a corresponding reduction to “Area A,” allowing retail, commercial and light industrial uses in Area C, and revise the design standards to allow screened outdoor storage (“Application”); and

**WHEREAS**, on June 12, 2019, the Planning and Zoning Commission conducted a public hearing and recommended approval of the Application subject to modifications to the text of the design standards, which conditions have been satisfied; and

**WHEREAS**, on July 1, 2019, the Town Council conducted a public hearing to consider the Application; and

**WHEREAS**, based upon the evidence presented at the public hearing and the recommendation of the Planning and Zoning Commission, the Town Council finds that the proposed amendments to the outline development plan for the I-25 Gateway Center, Filing No. 4, are appropriate and in the best interests of the Town.

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

**Section 1.** Approval of Amended Outline Development Plan. The I-25 Gateway Center, Filing No. Four-P.U.D. Amendment No. Two, Outline Development Plan-Final Development Plan, related to property located in the Southeast Quarter of Section 3, Township 4 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, attached hereto and incorporated herein by reference as Exhibit A, is hereby approved.

**Section 2.** 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. Upon its effective date, the Town Clerk is hereby directed to record the I-25 Gateway Center, Filing No. Four-P.U.D. Amendment No. Two, Outline Development Plan-Final Development Plan, as depicted on Exhibit A, with the Office of the Weld County Clerk and Recorder.

**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 10C**

**Easement Agreement  
(Return Flow Pipeline)**

**Assignment from W.R. Investment, LLC  
to the Town of Johnstown**

## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** July 1, 2019, 2019

**ITEM NUMBER:** 10C

**SUBJECT:** (1) Easement Agreement (Return Flow Pipeline) among the Town of Johnstown, Thompson Crossing Metropolitan District No. 3 and Clayton Properties Group II, Inc. and (2) Assignment from W.R. Investment, LLC to the Town of Johnstown.

**ACTION PROPOSED:** Approve Easement Agreement (Return Flow Pipeline) and Assignment

**PRESENTED BY:** Town Attorney, Avi Rocklin

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**AGENDA ITEM DESCRIPTION:** For consideration are two items that relate to transfer of the “Augmentation Plan” and related requirements with respect to the Hillsborough Ditch water rights dedicated from W.R. Investment, LLC (“WRI”) to the Town of Johnstown (“Town”) (“Water Rights”): (1) an Easement Agreement (Return Flow Pipeline) among the Town, Thompson Crossing Metropolitan District No. 3 (“District”) and Clayton Properties Group II, Inc. (“Clayton”) (“Easement Agreement”); and (2) an Assignment from WRI to the Town. To effectuate the transfer of the Augmentation Plan, there are two additional documents that are not included for consideration because they do not require Town execution, but are nevertheless a part of the transaction: a Quit Claim Deed from WRI, the District and Clayton to the Town and a Quit Claim Deed from WRI to the District and Clayton (collectively, “Quit Claim Deeds”).

The background is as follows. On January 4, 2006, the Town and WRI executed a Water and Sewer Service Agreement and, pursuant to the terms thereof, WRI dedicated the Water Rights to the Town. WRI thereafter commenced a water court case to change the Water Rights to municipal and other purposes and, on January 16, 2017, obtained a final decree (“Decree”) changing the use of the Water Rights and creating rights and obligations to operate and manage a plan for augmentation including, without limitation, appropriative rights of exchange and the Wiens Ranch Return Flow Water Right as described in the Decree (collectively the “Augmentation Plan”).

On May 7, 2018, the Town and WRI entered into an agreement (“Water Agreement”), creating a water bank for WRI’s benefit and contemplating that the Town or the District would operate and manage the Augmentation Plan. With the Town’s consent, WRI thereafter transferred the water bank to Clayton. Pursuant to the assignment, WRI agreed (i) to assign to the Town the rights and obligations to operate and manage the Augmentation Plan and (ii) to dedicate the return flow pipeline, as defined in the Water Agreement, and certain appurtenant infrastructure and measuring devices necessary to operate and manage the Augmentation Plan to the Town.

The Easement Agreement, Assignment and Quit Claim Deeds seek to accomplish the foregoing. While the Town will operate and manage the Augmentation Plan, the District will operate and maintain the infrastructure system built for the purposes of non-potable irrigation in the Thompson River Ranch development, including the associated irrigation ponds (“Irrigation Ponds”) (collectively, “Non-Potable Irrigation System”).

The components of the Augmentation Plan obligations and the Non-Potable Irrigation System overlap, requiring delineation and a more complete understanding of who is operating, maintaining and managing each part. The entire infrastructure system is described as follows:

- a. A “Headgate” in the Hillsborough Ditch diverts the Water Rights into a pipeline (the “Primary Delivery Pipeline”) that connects to a Parshall flume and data logger (collectively, the “Measuring Devices”).
- b. The Primary Delivery Pipeline delivers the Water Rights from the Measuring Devices and out of the Hillsborough Ditch to a pump station (the “Transfer Pump Station”).
- c. At the Transfer Pump Station, an amount of water needed to fill the Irrigation Ponds is sent through a totalizing flow meter (“Totalizing Flow Meter”) to the Irrigation Ponds by operation of a pressure transducer connected to the ponds (“Pressure Transducer”) via an irrigation pipeline (“Irrigation Pipeline”).
- d. The Water Rights enter the Transfer Pump Station from the Primary Delivery Pipeline that is over and above the amount of water that is pumped to the Irrigation Ponds as determined by the Pressure Transducer, enter the Return Flow Pipeline and are delivered to the Big Thompson River to meet obligations related to the Augmentation Plan and/or to deliver water to the Town.

For purposes of the Easement Agreement, the infrastructure that is being dedicated to the Town to operate and manage the Augmentation Plan are referred to as the “Dedicated Infrastructure” and consist of the Headgate, the Primary Delivery Pipeline, the Measuring Devices and the Return Flow Pipeline. The infrastructure that is being dedicated to, or is otherwise owned by, the District to operate and maintain the Non-Potable Irrigation System are referred to as the “District’s Infrastructure” and consist of the Transfer Pump Station, the Totalizing Flow Meter, the Irrigation Pipeline, the Irrigation Ponds and any other part of the Non-Potable Irrigation System.

The Easement Agreement allows the Town to access the District’s property to operate and manage the Dedicated Infrastructure. To ensure that the Town is able to properly operate and manage the Augmentation Plan, the Easement Agreement requires the District to: (i) provide an accurate water accounting and related information to the Town and (ii) properly operate and manage the District’s Infrastructure.

The Town’s water attorney and water engineer reviewed and approved of the forms of documents. The Town’s public works director reviewed and approved of the scope of the easement. Town staff conferred with Todd Williams, who has been managing the Augmentation Plan, to learn how to manage the plan going forward. Town Staff’s understanding is that Mr. Williams will be available on a consulting basis if needed.

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**LEGAL ADVICE:** The Town Attorney along with counsel for WRI, the District and Clayton drafted the Easement Agreement (Return Flow Pipeline) and the Assignment.

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**FINANCIAL ADVICE:** N/A.

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**RECOMMENDED ACTION:** Approve the Easement Agreement (Return Flow Pipeline) and the Assignment.

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**SUGGESTED MOTION:**

**For Approval:**

- (1) I move to approve the Easement Agreement (Return Flow Pipeline) among the Town of Johnstown, Thompson Crossing Metropolitan District No. 3 and Clayton Properties Group II, Inc.

- (2) I move to approve the Assignment from W.R. Investment, LLC to the Town of Johnstown.

**For Denial:**

- (1) I move to deny approval of the Easement Agreement (Return Flow Pipeline) among the Town of Johnstown, Thompson Crossing Metropolitan District No. 3 and Clayton Properties Group II, Inc.
- (2) I move to deny approval of the Assignment from W.R. Investment, LLC to the Town of Johnstown.

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**Reviewed:**

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**Town Manager**

# **Easement Agreement**

After recording return to:  
Town of Johnstown  
Attn: Town Clerk  
450 S. Parish Avenue  
Johnstown, CO 80534

**EASEMENT AGREEMENT**  
(Return Flow Pipeline)

**THOMPSON CROSSING METROPOLITAN DISTRICT NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado ("**District**"), whose address is c/o Icenogle Seaver Pogue, P.C., 4725 South Monaco Street, Suite 360, Denver, Colorado 80237 and **CLAYTON PROPERTIES GROUP II, INC.**, a Colorado corporation ("**Clayton**"), whose address is 4908 Tower Road, Denver, CO 80249 (collectively, the District and Clayton shall be referred to as the "**Grantors**") and the **TOWN OF JOHNSTOWN**, a Colorado home rule municipality (the "**Grantee**"), whose address is 450 S. Parish Ave., Johnstown, Colorado 80534, enter into this Easement Agreement as of the date of mutual execution hereof ("**Effective Date**"). The Grantors and Grantee may be collectively referred to as the "**Parties**," and singularly as a "**Party**."

**RECITALS**

WHEREAS, Grantee and W.R. Investment, LLC, a Colorado limited liability company, ("**WRI**") entered into that certain Water Agreement effective as of May 7, 2018 (the "**2018 Water Agreement**"), which water agreement created a water bank for the benefit of WRI containing 610 Single Family Equivalent units, as defined in Section 13-63(14) of Grantee's Municipal Code (the "**610 SFE Water Credits**").

WHEREAS, pursuant to that certain Assignment, Assumption and Bill of Sale ("**Assignment**") recorded on September 21, 2018 in the Larimer County, Colorado real property records ("**Official Records**"), at Reception No. 20180058428, WRI assigned to Clayton the 610 SFE Water Credits and appurtenant rights thereto as created in the 2018 Water Agreement; and Grantee consented to such Assignment pursuant to that certain Consent and Estoppel Certificate recorded on September 21, 2018 in the Official Records, at Reception No. 20180058429.

WHEREAS, the Assignment satisfied Grantee's desire that the 610 SFE Water Credits be acquired by Clayton, the developer of the Thompson River Ranch project (the "**Project**," as further defined in the Assignment), to provide potable water service for the Project.

WHEREAS, pursuant to the Assignment, WRI agreed (i) to assign, quit claim, sell and convey to Grantee, subject to paragraph 2 of the 2018 Water Agreement and acceptance by Grantee, the rights and obligations to operate and manage the plan for augmentation, as



described in the decree entered in Case No. 14CW3160, in the District Court in and for Water Division 1 (the “**Decree**”), including, without limitation, the associated appropriative rights of exchange and the Wiens Ranch Return Flow Water Right as described therein (collectively, the “**Augmentation Plan**”) and (ii) to dedicate and convey to Grantee the Return Flow Pipeline as defined in the 2018 Water Agreement and certain appurtenant infrastructure and measuring devices, all as further described herein (collectively, the “**Dedicated Infrastructure**”).

WHEREAS, the Dedicated Infrastructure is connected to the Big Thompson River and to an infrastructure system described in further detail below, that was built for the purposes of non-potable (raw water) irrigation for the Project (“**Non-Potable Irrigation System**”).

WHEREAS the Non-Potable Irrigation System utilizes Hillsborough Ditch water rights that were changed by WRI in Case No. 14CW3160 and dedicated to Grantee by WRI (“**Changed Hillsborough Water**”) in part for such purpose.

WHEREAS, a portion of the Changed Hillsborough Water is delivered to the District’s non-potable irrigation ponds for the Project (“**Irrigation Ponds**”) through a portion of the Non-Potable Irrigation System and such water is pumped from the Irrigation Ponds into the non-potable distribution system, for irrigation of Project parks and open space.

WHEREAS, the entire infrastructure system described above and depicted on **Exhibit A** is more particularly described as follows:

- a. A “**Headgate**” in the Hillsborough Ditch diverts the Changed Hillsborough Water into a pipeline (the “**Primary Delivery Pipeline**”) that connects to a Parshall flume and data logger (collectively, the “**Measuring Devices**”).
- b. The Primary Delivery Pipeline delivers the Changed Hillsborough Water from the Measuring Devices and out of the Hillsborough Ditch to a pump station (the “**Transfer Pump Station**”).
- c. At the Transfer Pump Station, an amount of water needed to fill the Irrigation Ponds is sent through a totalizing flow meter (“**Totalizing Flow Meter**”) to the Irrigation Ponds by operation of a pressure transducer connected to the ponds (“**Pressure Transducer**”). This non-potable irrigation water is delivered to the Irrigation Ponds from the Transfer Pump Station via an “**Irrigation Pipeline**.”
- d. The Changed Hillsborough Water entering the Transfer Pump Station from the Primary Delivery Pipeline that is over and above the amount of water that is pumped to the Irrigation Ponds as determined by the Pressure Transducer (the “**Overflow Water**”), enters the Return Flow Pipeline and is delivered to the Big Thompson River

to meet certain obligations of Grantee under the Augmentation Plan and/or to deliver Water to Grantee.

- e. The Dedicated Infrastructure consists of: The Headgate, the Primary Delivery Pipeline, the Measuring Devices and the Return Flow Pipeline.
- f. The Dedicated Infrastructure does not include the Transfer Pump Station, the Totalizing Flow Meter, the Irrigation Pipeline, the Irrigation Ponds or any part of the Non-Potable Irrigation System (collectively, the “**District’s Infrastructure**”).
- g. The “Irrigation Ponds” as used herein includes all infrastructure installed in the ponds.
- h. The “Non-Potable Irrigation System” as used herein is comprised of the Transfer Pump Station, the Irrigation Pipeline, the Totalizing Flow Meter, the Pressure Transducer, the Irrigation Ponds, plus all irrigation infrastructure from the Irrigation Ponds to and including the sprinkler heads for the system, the pump house, pumps, totalizing flow meters and pipelines.

WHEREAS, Grantee has agreed to accept assignment of the Augmentation Plan and Dedicated Infrastructure and to operate the Augmentation Plan for Grantee’s benefit and, in part, for Grantors’ benefit in order to provide water for the Project’s raw water irrigation including replacement of the Irrigation Ponds’ evaporation, as contemplated in paragraph 2 of the 2018 Water Agreement and as described below in this Easement Agreement.

WHEREAS, the Dedicated Infrastructure lies on property owned by Grantors.

NOW THEREFORE, for and in consideration of the above Recitals, the sum of Ten and 00/100ths Dollars (\$10.00), the promises set forth below, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

#### **EASEMENT GRANT AND AGREEMENT**

1. Recitals. All of the above Recitals are agreed to and incorporated as if set forth fully in this portion of the Easement Agreement.

2. Grant of Easement. Grantors hereby grant to Grantee (i) a 20 foot wide perpetual, non-exclusive easement (the “**Easement**”) under, in, over and through certain real property located within the Project in the County of Larimer, State of Colorado; along with (ii) the right to access the Easement area from Grantors’ adjacent property if necessary, via adjacent public roads and streets and the most direct and least impactful route and means reasonably available. The

Easement area is legally described and depicted in **Exhibits B1 and B2** (Easement No. 1 and Easement No. 2, respectively) attached hereto and incorporated herein by this reference (“**Easement Premises**”).

3. **Purpose of Easement.** The Easement is to be used by Grantee solely (a) for the lawful location, construction, reconstruction, installation, maintenance, operation, repair, removal, replacement and use of and access to the Dedicated Infrastructure and (b) for Grantee’s access to the Transfer Pump Station and the Irrigation Pump and Pipeline for the purpose of reading the totalizing flow meter in the Irrigation Pump and Pipeline and taking other reasonable action necessary to maintain and/or obtain compliance with the Augmentation Plan as described in paragraph 9 below, all at Grantee’s sole cost and expense for and in connection with operation of the Augmentation Plan, delivery of the Overflow Water to the Big Thompson River via the Return Flow Pipeline pursuant to the Augmentation Plan decree, and Grantee’s use of excess capacity in the Return Flow Pipeline pursuant to the 2018 Water Agreement and subject to the terms hereof (collectively, the “**Easement Purposes**”), except that Grantors are required to undertake those activities and expenses described in Paragraphs 7 and 9 below in order to allow Grantee to accomplish the Easement Purposes as more fully described herein. The Easement is granted by Grantors and is accepted by Grantee pursuant to the following terms and conditions of this Easement Agreement.

4. **Term.** The Easement and this Easement Agreement shall commence upon the Effective Date and shall run with the land and continue in full force and effect in perpetuity.

5. **Non-Interference.** Grantee, its agents, successors and permitted assigns shall have the right to enter upon the Easement Premises for the Easement Purposes, provided, however, that such activities shall not interfere unreasonably with the Grantors’ use and enjoyment of the Easement Premises, the property of which it is a portion, or any other property of Grantee adjacent to the Easement Premises, including without limitation, the District’s Infrastructure.

6. **Grantee Obligations.** Grantee shall operate the Augmentation Plan for its own benefit. Grantee shall also operate the Augmentation Plan for Grantors’ benefit and at no cost to the Project development or the District, as necessary to provide the raw water for the Project’s non-potable irrigation of up to 96 acres of irrigated common area, as currently contemplated and generally shown on the map attached hereto as **Exhibit C** (“**Non-potable Irrigation**”). Accordingly, Grantee shall (i) allow delivery of a portion of Grantee’s Changed Hillsborough Water via the Irrigation Pump and Pipeline, as needed to fill the Irrigation Ponds including replacing evaporative losses pursuant to the Augmentation Plan; and (ii) provide the return flow obligations associated with the Changed Hillsborough Water used for non-potable irrigation. The foregoing obligations of Grantee notwithstanding, the District shall be solely responsible for operation and maintenance of the Totalizing Flow Meter, Pressure Transducer and Irrigation Pipeline to allow delivery of the Changed Hillsborough Water from the Transfer Pump Station to the Irrigation Ponds.

7. Grantor Obligations. The foregoing obligations of Grantee for the benefit of Grantors are specifically subject to and conditioned upon the District at its sole cost and expense (a) timely providing to Grantee all water accounting and other information as reasonably required by Grantee in order to allow Grantee to properly account for the District's water use and to operate the Augmentation Plan under the terms and conditions of the Decree; and (b) operating, maintaining, repairing and replacing the District's Infrastructure as necessary for Grantee to accomplish the Easement Purposes.

8. Ownership and Control of Components. In order to clarify the respective ownership interests in the various components of the infrastructure as described above, and consistent with the terms of the Assignment and the 2018 Water Agreement (as such terms are defined in the Recitals above) the Parties have agreed that the following executed quit claim deeds and assignment shall be delivered contemporaneously with the execution of this Easement Agreement:

- a. Quit Claim Deeds of the Headgate, Primary Delivery Pipeline, the Measuring Devices and the Return Flow Pipeline, from WRI and Grantors to Grantee.
- b. An Assignment from WRI to Grantee of any and all of WRI's rights and obligations pursuant to (i) the Decree and Augmentation Plan and (ii) the correspondence dated March 5, 1928 from C.D. Todd, delivered on behalf of the Consolidated Hillsborough Ditch Company in which certain carriage rights and associated charges are described.
- c. Quit Claim Deed of the Transfer Pump Station, the Totalizing Flow Meter, the Irrigation Pipeline, the Pressure Transducer, and the Irrigation Ponds from WRI to the District.

9. Infrastructure Maintenance. Grantee agrees to maintain, repair and replace (collectively, "**Maintain**") the Dedicated Infrastructure as necessary to operate the Augmentation Plan for the Parties' respective purposes as described above and without undue interruption. The District agrees to Maintain the District's Infrastructure as necessary to accomplish the Easement Purposes and to allow bypass of the Overflow Water for Grantee's purposes under the Augmentation Plan and without undue interruption.

10. Failure to Maintain or Otherwise Perform. If the District does not Maintain the District's Infrastructure, or Grantee does not maintain the Dedicated Infrastructure as necessary for Grantee to operate the Augmentation Plan as required by the Decree and this Easement Agreement, then the Party that is not in default of its maintenance obligations may provide the Party that is in default of its maintenance obligations notice of such default in accordance with the most expeditious notification means available in accordance with Paragraph 24 below ("**Default**

Notice"). The Party receiving such Default Notice shall have 72 hours after receipt of same to cure the maintenance default giving rise to and identified in the Default Notice. If the Party in default of its maintenance obligations fails to cure the default within 72 hours after receipt of the Default Notice, then the Party giving the Default Notice shall be permitted, at the expense of the Party in default, to perform such maintenance or other corrective action to the Dedicated Infrastructure or the District's Infrastructure, as the case may be, and as is required to permit compliance with the Augmentation Plan and this Easement Agreement. The non-defaulting Party taking such corrective action in regard to the other Party's maintenance obligations may thereafter, in its sole discretion, provide an invoice to the defaulting Party for the costs incurred in the performance of such maintenance or other corrective action, which invoice may include reasonable administrative expenses of the Party taking the corrective action. The Party receiving such invoice shall pay the invoice within thirty (30) days of receipt. If a Party continuously fails to Maintain its infrastructure or fails to pay any such invoice within sixty (60) days after receipt, or is in default of any other provision of this Easement Agreement, the non-defaulting Party may seek such judicial remedies as it deems appropriate. The prevailing Party in any such action shall be entitled to an award of its reasonable costs and attorney fees from the non-prevailing Party.

11. Headgate. Notwithstanding anything in this Easement Agreement to the contrary, and despite the Quit Claim Deeds of the Headgate from WRI and Grantors to Grantee, the Parties recognize and agree that the Consolidated Hillsborough Ditch Company ("**Ditch Company**") may either operate and maintain, or dictate the operation and/or maintenance of, the Headgate. Grantee agrees to work with the Ditch Company, and comply with the valid requirements, if any, of the Ditch Company with respect to the Headgate in order to operate the Augmentation Plan. Grantee's ability to operate the Augmentation Plan may be subject to actions or omissions of the Ditch Company and any non-performance by Grantee related to the actions or omissions of the Ditch Company shall be excused and shall not subject Grantee to liability hereunder.

12. Grantee's Supplemental and Reserved Right to Use the Changed Hillsborough Water and the Return Flow Pipeline. The Parties recognize and agree that, as long as the obligations herein are satisfied, Grantee is entitled to use the Changed Hillsborough Water and the Return Flow Pipeline for municipal purposes. If Grantee chooses to use such excess Changed Hillsborough Water or the Return Flow Pipeline for such municipal purposes, Grantors (a) agree not to interfere with such use and (b) consent to the Transfer Pump Station being used to turn water into the Return Flow Pipeline for such municipal purposes, which are purposes other than the fulfillment of obligations under this Easement Agreement

13. Obstructions. Absent Grantee's written consent, Grantors: (i) shall not construct or place any structure, building or any hard surfacing improvements, such as concrete or asphalt, street light or power pole, on any part of the Easement Premises; and (2) shall not construct, place or plant any non-hard surface improvements, including without limitation, any shrub, tree, woody plant, nursery stock, garden or other landscaping design feature on any part of the Easement Premises which would interfere unreasonably with the Grantee's use of the Easement Premises.

Nothing herein shall require Grantors to remove any permanent objects located within the Easement Premises as of the date of execution hereof.

14. Restoration. Grantee, to the extent practicable, shall restore the Easement Premises to the original state, including the surface of the ground and all permitted landscaping, if any, to the condition it was in immediately prior to the date of entry upon the Easement Premises by Grantee, except as necessarily modified to accommodate the Dedicated Infrastructure.

15. Lateral and Subjacent Support. Grantee shall have and exercise the right of subjacent and lateral support to whatever extent is necessary for the operation and maintenance of the Dedicated Infrastructure. It is specifically agreed between and among the Parties that, except as provided in this Easement Agreement, the Grantors shall not take any action which would impair the lateral or subjacent support for the Dedicated Infrastructure.

16. Non-Exclusive. Grantors reserve the right to grant further easement interests in the Easement Premises to other grantees so long as such interests and uses are not inconsistent with, and do not interfere unreasonably with, the use of the Easement Premises and benefits of the Easement by the Grantee, its successors and permitted assigns, as described herein and so long as the interests do not extinguish or impair Grantee's rights hereunder.

17. Runs with the Land. The rights and responsibilities set forth in this Easement Agreement are intended to be covenants on the Easement Premises and are to run with and burden the Easement Premises and to run with and benefit the Dedicated Infrastructure, the Augmentation Plan, the Non-Potable Irrigation System as described above, until such time, if ever, that the Easement is abandoned.

18. Choice of Law and Venue. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and venue for any dispute hereunder shall lie in the Larimer or Weld County District Court.

19. Governmental Immunity. Nothing herein or any actions taken by the District or Grantee pursuant to this Easement Agreement shall be deemed a waiver of the its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes.

20. Entire Agreement. This Easement Agreement constitutes the entire agreement between the Parties and exclusively sets forth the rights, duties, and obligations of each to the other, concerning the subject matter hereof as of this date. Any prior agreements, promises, negotiations, or representations concerning the subject matter hereof which are not expressly set forth in this Easement Agreement are of no force and effect. This Easement Agreement may not be altered, modified or amended except by a written agreement signed by the Parties.

21. Termination of License. The Parties recognize that the License Agreement dated as March 23, 2018, which granted WRI rights to use of the Easement Premises, was terminated pursuant to that Termination of License Agreement dated April 16, 2019.

22. No Third Party Beneficiaries. This Easement Agreement does not, and shall not be deemed or construed to, confer upon or grant to any persons or entities who are not Parties to this Easement Agreement, their successors and assigns, any rights or benefits whatsoever.

23. Counterparts. This Easement Agreement may be executed in any number of counterparts, each of which shall be deemed an original with the same effect as if the signatures thereto and hereto were upon the same instrument.

24. Notices. Any Notice to be given pursuant to this Easement Agreement shall be given by United States Mail, hand delivery, overnight carrier, or by email at the addresses provided below; and notice shall be deemed given upon receipt thereof.

If to Clayton:

Mr. Jason Pock  
Clayton Properties Group II, Inc. dba Oakwood Homes  
4908 Tower Road  
Denver, Colorado 80249  
E-mail: [jpock@oakwoodhomesco.com](mailto:jpock@oakwoodhomesco.com)

*With Copy to:*

Stephen C. Larson, Esq.  
Johnson & Repucci LLP  
850 W. South Boulder Road, Suite 100  
Louisville, CO 80027  
E-mail: [sclarson@j-rlaw.com](mailto:sclarson@j-rlaw.com)

If to District:

Thompson Crossing Metropolitan District No. 3  
Attention: District Manager  
5110 Granite Street, Suite C  
Loveland, CO 80538

*With Copy to:*

Jennifer L. Ivey, Esq.  
4725 South Monaco Street, Suite 360  
Denver, Colorado 80237  
E-mail: [jivey@isp-law.com](mailto:jivey@isp-law.com)

If to Johnstown:

Town of Johnstown  
c/o Town Manager  
P.O. Box 609  
450 S. Parish Avenue  
Johnstown, CO 80534  
E-mail: [mlecerf@townofjohnstown.com](mailto:mlecerf@townofjohnstown.com)

*With Copy to:*

Avi S. Rocklin, Esq.  
Law Office of Avi S. Rocklin, LLC  
1437 N. Denver Avenue, # 330  
Loveland, Colorado 80538  
E-mail: [avi@rocklinlaw.com](mailto:avi@rocklinlaw.com)


*[signatures to follow on next pages]*



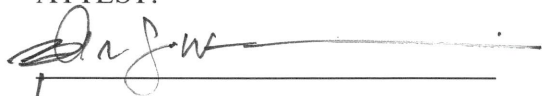
IN WITNESS WHEREOF, the Parties have duly executed this Easement Agreement this 17 day of June, 2019.

**Carissa Dunlap**  
Notary Public, State of Colorado  
20164040877 Exp: 10/26/2020

**GRANTOR:**  
THOMPSON CROSSING METROPOLITAN  
DISTRICT NO. 3

  
By: Bruce Ran  
Its: Chairman

ATTEST:

  
\_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Carmer )

The foregoing Easement Agreement was acknowledged before me this 17 day of June, 2019, by Bruce Ran as Chairman and by Brandon Ryszynski as Director of Thompson Crossing Metropolitan District No. 3.

WITNESS my hand and official seal.

My commission expires: 10/26/2020

(SEAL)

  
\_\_\_\_\_  
Notary Public

**Carissa Dunlap**  
Notary Public, State of Colorado  
20164040877 Exp: 10/26/2020

CLAYTON PROPERTIES GROUP II, INC.

Its:

{00434178 / 18 }

**GRANTEE:**

TOWN OF JOHNSTOWN, a Colorado home rule  
municipality

---

By: Gary Lebsack

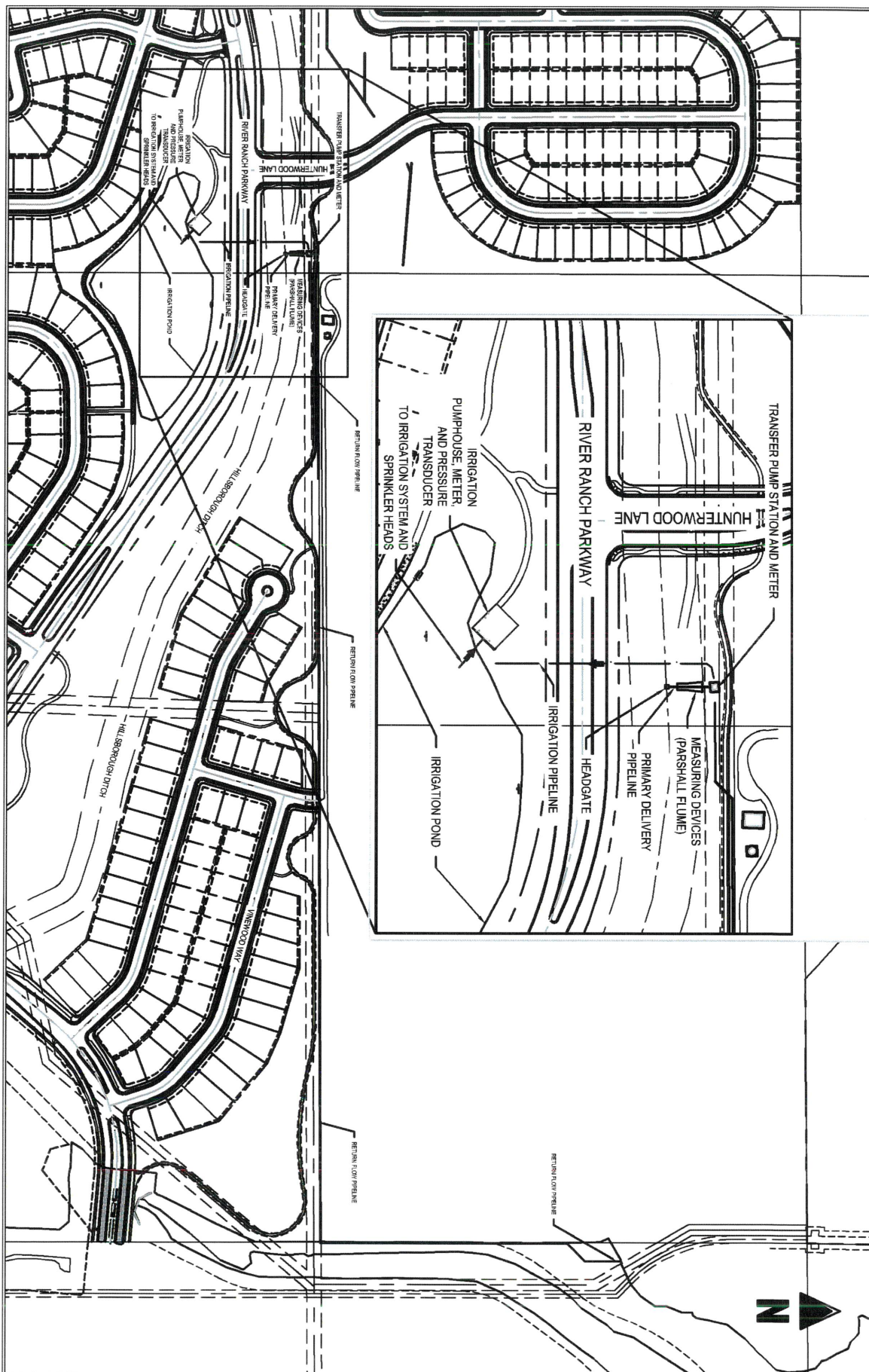
Its: Mayor

ATTEST:

---

Diana Seele, Town Clerk

## EXHIBIT A



**WEINS RETURN FLOW PIPELINE  
DEDICATED INFRASTRUTURE**

THOMPSON RIVER RANCH JOHNSTON, CO

EXHIBIT "A"

Project No:	-
Drawn By:	AGM
Checked By:	RVU
Date:	04/19/19

**Galloway**

6162 S. Willow Drive, Suite 320  
Greenwood Village, CO 80111  
303.770.8884 • GallowayUS.com

## EXHIBIT B1



## LEGAL DESCRIPTION

### **PROPOSED IRRIGATION WATER RETURN FLOW PIPELINE EASEMENT NO. 1 DESCRIPTION**

AN IRRIGATION WATER RETURN FLOW PIPELINE EASEMENT BEING PART OF TRACT L, FIRST AMENDMENT TO THOMPSON RIVER RANCH FILING NO. 1 AS RECORDED IN RECEPTION NUMBER 20070008127 IN THE LARIMER COUNTY CLERK AND RECORDER'S OFFICE, BEING PART OF THE NORTHEAST QUARTER AND THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 23 AND THE SOUTH HALF OF SECTION 22, ALL IN TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE SIXTH (6<sup>TH</sup>) PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO. SAID PARCEL DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTH QUARTER CORNER OF SECTION 23; THENCE ON THE WEST LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 23, S00°00'45"W, A DISTANCE OF 642.21 FEET;

THENCE N45°00'45"E, A DISTANCE OF 57.99 FEET;

THENCE N00°00'45"E, A DISTANCE OF 105.37 FEET;

THENCE S89°59'15"E, A DISTANCE OF 20.00 FEET;

THENCE S00°00'45"W, A DISTANCE OF 113.65 FEET;

THENCE S45°00'45"W, A DISTANCE OF 57.99 FEET;

THENCE S00°00'45"W, A DISTANCE OF 692.55 FEET;

THENCE S89°43'26"W, A DISTANCE OF 1187.23 FEET TO THE EAST RIGHT OF WAY LINE OF WOODHAVEN LANE AND A NON-TANGENT CURVE TO THE LEFT;

HENCE ALONG SAID NON-TANGENT CURVE, HAVING A RADIUS OF 205.00 FEET, A CENTRAL ANGLE OF 00°04'22", A DISTANCE OF 0.26 FEET, A CHORD BEARING OF N00°14'23"W WITH A CHORD DISTANCE OF 0.26 FEET;

THENCE CONTINUING ON AID EAST RIGHT OF WAY N00°16'34"W, A DISTANCE OF 19.74 FEET TO THE NORTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 23;

THENCE ON SAID NORTH LINE, N89°43'26"E, A DISTANCE OF 1167.33 FEET TO THE CENTER-NORTH 1/16 CORNER OF SECTION 23, MONUMENTED WITH A NUMBER 6 REBAR WITH A 2-1/2" ALUMINUM CAP STAMPED "LS 38512;

THENCE ON THE WEST LINE OF THE NORTH HALF OF SAID NORTHEAST QUARTER SECTION 23, N00°00'45"E, A DISTANCE OF 680.94 FEET TO THE **POINT OF BEGINNING**.

PARCEL CONTAINS 40,630 SQUARE FEET OR 0.933 ACRES.

### **BASIS OF BEARING:**

THE WEST LINE OF NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 23 IS ASSUMED TO BEAR N00° 00' 45" E, BEING MONUMENTED ON THE NORTH BY A 2" ALUMINUM CAP ON 2-1/4" PIPE STAMPED "LS 37911" AND ON THE SOUTH BY A NUMBER 6 REBAR WITH A 2-1/2" ALUMINUM CAP STAMPED "LS 38512" WITH ALL OTHER BEARINGS RELATIVE THERETO.

**EXHIBIT B** IS ATTACHED HERETO AND IS ONLY INTENDED TO DEPICT EXHIBIT A - LEGAL DESCRIPTION. IN THE EVENT THAT EXHIBIT A CONTAINS AN AMBIGUITY, EXHIBIT B MAY BE USED TO RESOLVE SAID AMBIGUITY.

PREPARED FOR AND ON BEHALF OF GALLOWAY  
BY FRANK A. KOHL, PLS# 37067



June 5, 2019

H:\WR Investments\CO, Johnstown - WRI000001.01 - Weins Pond\Survey\Docs\IRR LEGAL DESC- EASEMENT NO 1



# EASEMENT 1

## LEGEND



FOUND MONUMENT SHOWN AS DESCRIBED

REC. NO.

RECEPTION NUMBER

PROPOSED EASEMENT

EXISTING EASEMENT LINE

P.O.C.

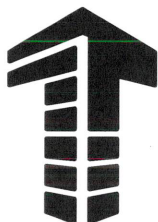
POINT OF COMMENCING

P.O.B.

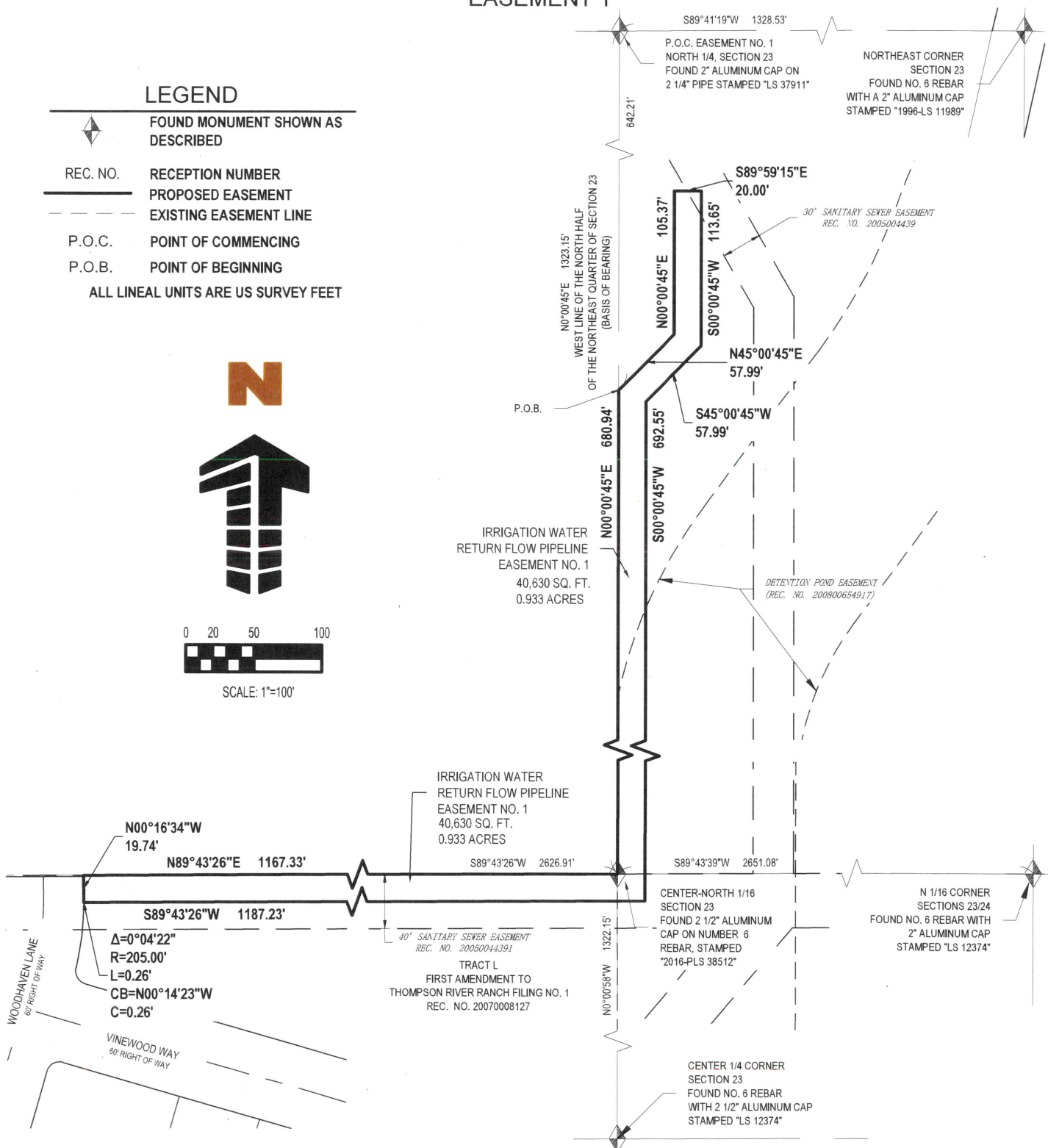
POINT OF BEGINNING

ALL LINEAL UNITS ARE US SURVEY FEET

N



SCALE: 1"=100'



# Galloway

Planning. Architecture. Engineering.  
5625 Ronald Reagan Blvd., Suite 210  
Johnstown, CO 80534  
970.800.3300 O  
www.gallowayUS.com

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#	Date	Issue / Description	Init.

A PART OF  
SECTION 23 AND 24,  
T. 5 N., R. 68 W.  
TOWN OF JOHNSTOWN,  
COLORADO

Project No: WRI000001.01

Drawn By: AN

Checked By: FAK

Date: 6/5/19

3 OF 3

## EXHIBIT B2

## LEGAL DESCRIPTION

### **PROPOSED IRRIGATION WATER RETURN FLOW PIPELINE EASEMENT NO. 2 DESCRIPTION**

AN IRRIGATION WATER RETURN FLOW PIPELINE EASEMENT BEING PART OF TRACT E, FIRST AMENDMENT TO THOMPSON RIVER RANCH FILING NO. 1 AS RECORDED IN RECEPTION NUMBER 20070008127 IN THE LARIMER COUNTY CLERK AND RECORDER'S OFFICE, BEING PART OF THE NORTHEAST QUARTER AND THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 23 AND THE SOUTH HALF OF SECTION 22 ALL IN TOWNSHIP 5 NORTH AT RANGE 68 WEST OF THE SIXTH (6<sup>TH</sup>) PRINCIPAL MERIDIAN TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO. SAID PARCEL DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTH 1/16 CORNER OF SECTION 22 AND 23; THENCE ALONG THE NORTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 23, N89°43'26"E, A DISTANCE OF 87.04 FEET TO THE POINT OF BEGINNING;

THENCE N89°43'26"E, A DISTANCE OF 1312.54 FEET;

THENCE S00°16'34"E, A DISTANCE OF 19.74 FEET;

THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 145.00 FEET, A CENTRAL ANGLE OF 00°06'11", A DISTANCE OF 0.26 FEET, A CHORD BEARING OF S00°13'28"E WITH A CHORD DISTANCE OF 0.26 FEET;

THENCE S89°43'26"W, A DISTANCE OF 1304.26 FEET;

THENCE S44°45'46"W, A DISTANCE OF 22.73 FEET;

THENCE S89°45'46"W, A DISTANCE OF 143.83 FEET;

THENCE N00°14'14"W, A DISTANCE OF 20.00 FEET;

THENCE N89°45'46"E, A DISTANCE OF 135.55 FEET;

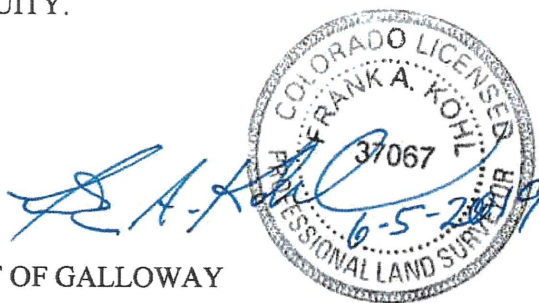
THENCE N44°45'46"E, A DISTANCE OF 22.72 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 29,416 SQUARE FEET OR 0.675 ACRES, MORE OR LESS.

### **BASIS OF BEARING:**

THE WEST LINE OF NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 23 IS ASSUMED TO BEAR N00° 00' 45" E, BEING MONUMENTED ON THE NORTH BY A 2" ALUMINUM CAP ON 2-1/4" PIPE STAMPED "LS 37911" AND ON THE SOUTH BY A NUMBER 6 REBAR WITH A 2-1/2" ALUMINUM CAP STAMPED "LS 38512" WITH ALL OTHER BEARINGS RELATIVE THERETO.

**EXHIBIT B** IS ATTACHED HERETO AND IS ONLY INTENDED TO DEPICT EXHIBIT A - LEGAL DESCRIPTION. IN THE EVENT THAT EXHIBIT A CONTAINS AN AMBIGUITY, EXHIBIT B MAY BE USED TO RESOLVE SAID AMBIGUITY.

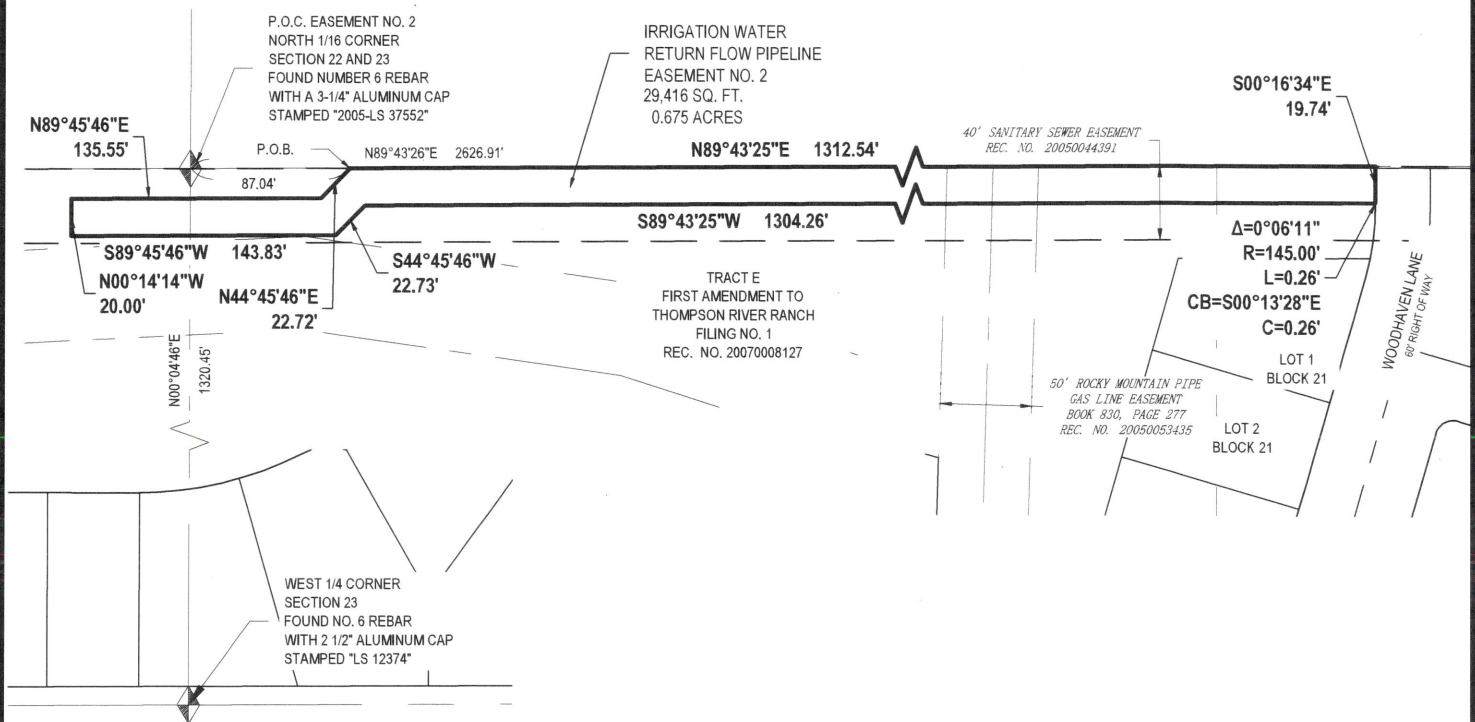


PREPARED FOR AND ON BEHALF OF GALLOWAY  
BY FRANK A. KOHL, PLS# 37067

June 5, 2019

H:\WR Investments\CO, Johnstown - WRI000001.01 - Weins Pond\Survey\Docs\IRR EASEMENT LEGAL DECR NO 2

## EASEMENT 2



## LEGEND



FOUND MONUMENT SHOWN AS  
DESCRIBED

REC. NO.

RECEPTION NUMBER

**PROPOSED EASEMENT**

EXISTING EASEMENT LINE

P.O.C.

POINT OF COMMENCING

P.O.B.

POINT OF BEGINNING

ALL LINEAL UNITS ARE US SURVEY FEET



0      20      50      100



SCALE: 1"=100'

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#	Date	Issue / Description	Init.
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—	—	—	—
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A PART OF  
SECTION 23 AND 24,  
T. 5 N., R. 68 W.  
TOWN OF JOHNSTOWN,  
COLORADO

Project No: WRI000001.01

Drawn By: AN

Checked By: FAK

Date: 6/5/19

3 OF 3

## EXHIBIT C





**Assignment from  
WRI to Town of Johnstown**



## ASSIGNMENT

This ASSIGNMENT made as of June 19, 2019, is from W. R. INVESTMENT, LLC, a Colorado limited liability company ("Assignor") to the TOWN OF JOHNSTOWN, a Colorado home rule municipality, whose legal address is 450 S. Parish Ave., Johnstown, Colorado 80534 ("Assignee"). The Assignor and Assignee may be collectively referred to as the "Parties."

## RECITALS

WHEREAS, on January 4, 2006, the Parties executed a Water and Sewer Service Agreement ("WSSA") and, pursuant to the terms thereof, Assignor dedicated certain Hillsborough Ditch water rights ("Water Rights") to Assignee; and

WHEREAS, in 2014, per the WSSA, Assignor commenced a water court case, Case No. 14CW3160 in the District Court in and for Water Division 1, to change the Water Rights to municipal and other purposes and, on January 16, 2017, obtained a final decree ("Decree") changing the use of the Water Rights and creating rights and obligations to operate and manage a plan for augmentation including, without limitation, appropriative rights of exchange and the Wiens Ranch Return Flow Water Right as described therein (collectively the "Augmentation Plan"); and

WHEREAS, pursuant to an Easement Agreement (Return Flow Pipeline) by and between Thompson Crossing Metropolitan District No. 3, a quasi-municipal corporation and political subdivision of the State of Colorado, Clayton Properties Group II, Inc., a Colorado corporation and Assignee ("Easement Agreement"), Assignee has agreed to operate and manage the Augmentation Plan; and

WHEREAS, on or about March 25, 1928, correspondence from C.D. Todd, delivered on behalf of the Consolidated Hillsborough Ditch Company, described certain carriage rights held by the then-current owners of all, or a portion of, the number one water rights carried in the Hillsborough Ditch, and the charges to be assessed upon such carriage water, as more specifically described in the letter attached hereto and incorporated herein by reference as Exhibit A ("Carriage Agreement"); and

WHEREAS, consistent with the Water Agreement between Assignor and Assignee dated May 7, 2018 ("Water Agreement"), and with the dedication of the Water Rights from the Assignor to Assignee, the Parties desire that Assignor assign the Carriage Agreement, Decree and Augmentation Plan to Assignee, and Assignee accept the Assignment of the Carriage Agreement, Decree and Augmentation Plan.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby effect this Assignment as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into the operative provisions of this Assignment by this reference as if such recitals were set forth herein in full.

WITNESSED AND SIGNED:  
TOWN OF JOHNSTOWN  
BY: \_\_\_\_\_  
CLAYTON PROPERTIES GROUP II, INC.  
BY: \_\_\_\_\_



**ASSIGNEE:**

TOWN OF JOHNSTOWN, a Colorado home rule  
municipality

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

ATTEST:

By: \_\_\_\_\_  
Diana Seele, Town Clerk

**EXHIBIT A**



Greeley, Colorado,

March 5, 1938

THE CONSOLIDATED HILLSBOROUGH DITCH COMPANY

Gentlemen:

On the 27th day of April 1936 the district court of Larimer county made and entered its findings and decree in cause 3886, T. R. Norcross, Zenith McCoy, Martha J. Gard, G. Joseph LaJeunesse, and W. B. Harris, v. your company, concerning the charges that the above named plaintiffs should pay for running their number ONE WATER in the Hillsborough ditch and you have submitted to me the decree so entered and request an opinion thereon as to what annual assessment said owners of number ONE WATER shall pay your company for the carriage of their water. In reply thereto I will say: that under the terms and the provisions of the said decree the rights and the liabilities of the parties are as follows:

1st---That your company is required to carry the number ONE WATER of the plaintiffs and their successors in title from the river headgate to their respective headgates annually, subject to loss by seepage and process of carriage, as follows:

For each second foot diverted into the headgate of your ditch you are required to deliver at their respective headgates 44/55s of a cubic foot and they shall stand the loss of the remaining 11/55s, and for a fractional foot shall be the same proportion. In other words you deduct 20% of all water for the carriage.

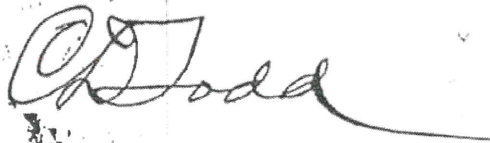
2nd---Said decree provides that beginning with the year 1936 you are required to carry said water annually thereafter upon an annual charge of \$35 per second foot for all waters carried for said parties or their successors in title, which carriage charge shall be paid on or before April 1, of each year, and no water shall be carried until the annual charge has been paid.

The decree also provided that each of said parties should pay for the past service out of which the litigation arose, but that is not material now, as they settled up all the back charges, and you are only now interested in the charge for the future, as above indicated.

In one of our offers of settlement we offered to carry the water at the same price per second foot as the annual assessment on each share of the Hillsborough stock which was then \$35, but the decree made the charge \$35 straight, with no sliding scale.

YOURS TRULY,

C. D. TODD



odt/hcl

**AGENDA ITEM 10D**

**Resolution 2019-17**  
**(Budget Amendment)**

## **TOWN COUNCIL AGENDA COMMUNICATION**

**AGENDA DATE:** July 1, 2019

**ITEM NUMBER:** 10D

**SUBJECT:** FY 2019 Budget Amendment No. 2

**ACTION PROPOSED:** Approve the Proposed FY 2019 Budget Amendment No. 2 as Presented

**ATTACHMENTS:** 1. Resolution 2019-17

**PRESENTED BY:** Matt LeCerf, Town Manager

---

### **AGENDA ITEM DESCRIPTION:**

Below is a series of budget amendment requests for the second quarter of 2019. The changes are broken into the various funds with descriptions associated with each of the proposed amendments. 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. Caselle Accounts Receivable Module - \$10,000
  - a. This Caselle module will allow the Town restructure and mapping of the chart of accounts to increase transparency and accountability of the various funds. This change is necessary based on the presentation during the 2019 Council retreat. This restructuring will be in place as we change in FY 2020 to the new funds and chart of accounts.
2. K-9 Dog - \$2,065
  - a. At the Council Retreat, Chief presented an opportunity to acquire a K-9 Dog for the Department. While initially planned for 2020, this project if approved to move forward now has cost savings through shared costs of Veterinarians and personnel who evaluate dogs for potential success who will travel with our team to evaluate the dog. These costs will be shared with Estes Park who is also acquiring a K-9 Dog. The costs shown here are associated with Operation and Maintenance costs for the dog, not capital (impact) costs which are presented below in the Impact Fund.
3. Police Vehicle Repairs - \$34,000
  - a. In 2018, the Town experienced a significant hail storm. As part of the damage sustained to the community, our police cars were also exposed to the elements causing what CIRSA estimated as approximately \$43,000 in damage to our police fleet. In 2019, CIRSA issued a check to the Town in the amount of \$40,879.96

which will be used to repair all of the vehicles in the fleet (does not include our deductible). Our final costs for repairing these vehicles was \$75,754.75 based on competitive bids and final costs. Accordingly to expend funds for these repairs a budget amendment is necessary to incur the costs which will be offset mostly by the revenue for this item. Repairs were completed by June 2019. The balance necessary is \$32,754.75. Staff is requesting this amount be rounded up to \$34,000 for any other vehicle repairs necessary in the Police Department Fleet.

4. Staffing Requests - \$91,284

- a. As part of the recent Council Retreat, staff presented information to Council related to immediate staffing needs. In the request, 3 positions were asked for consideration in this fiscal year. Those positions were as follows:
  - i. Planner – This would provide an additional planner for the Planning and Development Department. This request was made due to project volume and improved responsiveness within the department. The total financial burden for the remainder of the fiscal year is estimated at \$37,483.
  - ii. Public Works Park/Streets – This creates an additional position in the PW Street/Park Department. Given the volume of work to maintain our community our level of service delivery could improve with an additional team member this year. The total financial burden for the remainder of the fiscal year is estimated at \$27,132.
  - iii. Executive/Administrative Assistant – This position would help facilitate work for the Town Manager, Planning & Development Director, and Public Works Director, and Town Clerk/HR positions. The position would answer to the Town Manager for organizational purposes. The total financial burden for the remainder of the fiscal year is estimated at \$26,669.

5. Economic Development - \$40,000

- a. This funding would be for economic development purposes of a catalyst project. These funds would be used in the analysis, where necessary, to evaluate a specific project.

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 Total Expenditures with Amendments:	\$31,527,949
FY 2019 Budget Estimated Ending Funds Balance with Amendment:	\$24,733,231

**Impact Fee Fund:**

1. K-9 Dog - \$81,275

- a. At the Council Retreat, Chief presented an opportunity to acquire a K-9 Dog for the Department. While initially planned for 2020, this project if approved to move forward now has cost savings through shared costs of Veterinarians and personnel



who evaluate dogs for potential success who will travel with our team to evaluate the dog. These costs will be shared with Estes Park who is also acquiring a K-9 Dog. The costs shown here are associated regular operations and maintenance of the Johnstown PD K-9. These items can only be funded through the General Fund.

FY 2019 Approved Expenditures:	\$ 101,000
FY 2019 Approved Estimated Ending Fund Balance:	\$18,546,700
FY 2019 Budget Amendment Expenditures (March 2019):	\$ 501,840
FY 2019 Budget Amendment Expenditures (July 2019):	\$ 81,275
FY 2019 Budget Total Expenditures with Amendments:	\$ 684,079
FY 2019 Budget Estimated Ending Funds Balance with Amendment:	\$ 18,418,234

**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

# **RESOLUTION**

**No. 2019-17**

**TOWN OF JOHNSTOWN**

**RESOLUTION NO. 2019-17**

**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**, on March 18, 2019, the Town Council, adopted, Resolution No. 2019-09, Amending the Fiscal Year 2019 Budget (“2019 Budget”); and

**WHEREAS**, on March 18, 2019, the Town Council, adopted, Resolution No. 2019-09, Amending the Fiscal Year 2019 Budget (“2019 Budget”) included a numerical error on Section 4, stating an increase in the Impact Fund Amendment from \$101,000 to \$501,840 when it should have been \$101,000 to \$602,840; and

**WHEREAS**, the Town Council of the Town of Johnstown has received a second request with a recommendation from Town staff to revise the 2019 spending plan for the funds listed below to 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 \$31,350,600 to \$31,527,949 for the purpose of defraying additional expenses.

**Section 4. Impact Fee 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 \$602,840 to \$684,079 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 1<sup>st</sup> day of July, 2019.

**ATTEST**

**TOWN OF JOHNSTOWN,  
COLORADO**

By: \_\_\_\_\_  
Diana Seele, Town Clerk

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