

**TOWN OF MEAD, COLORADO  
RESOLUTION NO. 36-R-2020**

**A RESOLUTION OF THE TOWN OF MEAD, COLORADO,  
APPROVING THE FIRST AMENDMENT TO SUBDIVISION  
IMPROVEMENT AGREEMENT BETWEEN THE TOWN OF MEAD  
AND THE DEVELOPER OF THE SORRENTO SUBDIVISION**

**WHEREAS**, the Town of Mead and 532 VENTURES, LLC, a Colorado limited liability company (“532 Ventures”) entered into that certain Subdivision Improvement Agreement dated October 29, 2018 and recorded in the official records of Weld County, Colorado, on December 3, 2018 at Reception No. 4450516 regarding improvements to be made in the Sorrento Subdivision (the “Agreement”); and

**WHEREAS**, the Agreement constitutes the subdivision improvement agreement for the Sorrento Subdivision Final Plat, as required by Sec. 16-4-130 of the *Mead Municipal Code*; and

**WHEREAS**, 532 Ventures assigned its interest in the Agreement to ENCORE ENERGY INVESTMENTS LLC, a Nevada limited liability company, LORSON SOUTH LAND CORP., a Colorado corporation, BABCOCK ENCHANGE, LLC, a Colorado limited liability company, and BABCOCK LAND CORP., a Colorado corporation (collectively, the “Developer”) by that certain Assignment and Assumption of Subdivision Improvements Agreement dated December 12, 2018 and recorded in the official records of Weld County, Colorado, on December 14, 2018 at Reception No. 4453787; and

**WHEREAS**, Developer desires to adjust the Project Commencement Date for the CR 32 Improvements, as those terms are defined in the Agreement, in order to permit building permits to be obtained within Phase 3 and certificates of occupancy or temporary certificates of occupancy to be issued within Phases 1 through 3; and

**WHEREAS**, the Town desires to consent to the adjustment of the Project Commencement Date for the CR 32 Improvements conditioned on the Developer contributing an equitable share of costs associated with the installation of a future traffic signal and related improvements to be located at the intersection of Weld County Road 5 (WCR 5) and Highway 66; and

**WHEREAS**, the amendments to the Agreement to are set forth in that certain First Amendment to Subdivision Improvement Agreement (the “First Amendment”), a copy of which is attached to this Resolution as **Exhibit A** and is incorporated herein by reference; and

**WHEREAS**, the First Amendment has been executed by the Developer and is on file with the Town Clerk; and

**WHEREAS**, the Board of Trustees desires to approve the First Amendment and further desires to authorize the Town Manager to execute the First Amendment on behalf of the Town,

**NOW THEREFORE, BE IT RESOLVED** by the Board of Trustees of the Town of Mead, Weld County, Colorado, that:

**Section 1.** The foregoing recitals and findings are incorporated herein as findings and conclusions of the Board of Trustees.

**Section 2.** The Board of Trustees hereby: (a) approves the First Amendment in substantially the same form as is attached hereto as **Exhibit A**; (b) authorizes the Town Attorney in cooperation with the Town Manager to make non-material changes to the First Amendment that do not increase the Town's obligations; and (c) authorizes the Town Manager to execute the First Amendment on behalf of the Town.

**Section 3.** Following the execution of the First Amendment by the Town Manager, the Town Clerk shall cause the First Amendment to be recorded in the real property records of Weld County, Colorado.

**Section 4. Effective Date.** This resolution shall be effective immediately upon adoption.

**Section 5. Repealer.** All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.


**Section 6. Certification.** The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

**INTRODUCED, READ, PASSED, AND ADOPTED THIS 21st DAY OF MARCH, 2020.**


**ATTEST:**

**TOWN OF MEAD**

By

  
Mary E. Strutt, MMC, Town Clerk

By

  
Colleen G. Whitlow, Mayor

Attachment(s):

**Exhibit A - First Amendment to Subdivision Improvement Agreement**

## FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT

**THIS FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT** (“FIRST AMENDMENT”) is made and entered into by and between the **TOWN OF MEAD**, a Colorado municipal corporation, whose address is P.O. Box 626, Mead, Colorado (“TOWN”), and **ENCORE ENERGY INVESTMENTS LLC**, a Nevada limited liability company, **LORSON SOUTH LAND CORP.**, a Colorado corporation, **BABCOCK ENCHANGE, LLC**, a Colorado limited liability company, and **BABCOCK LAND CORP.**, a Colorado corporation (collectively, “DEVELOPER”) (together, the “Parties”). This First Amendment shall be effective upon mutual execution hereof by the Parties (the “Effective Date”).

**WHEREAS**, the TOWN and 532 VENTURES, LLC, a Colorado limited liability company (“Assignor”) entered into that certain Subdivision Improvement Agreement dated October 29, 2018 and recorded in the official records of Weld County, Colorado, on December 3, 2018 at Reception No. 4450516 (the “AGREEMENT”); and

**WHEREAS**, the AGREEMENT constitutes the subdivision improvement agreement for the Sorrento Subdivision Final Plat, as required by Sec. 16-4-130 of the Mead Municipal Code; and

**WHEREAS**, Assignor assigned its interest in the AGREEMENT to DEVELOPER by that certain Assignment and Assumption of Subdivision Improvements Agreement dated December 12, 2018 and recorded in the official records of Weld County, Colorado, on December 14, 2018 at Reception No. 4453787; and

**WHEREAS**, DEVELOPER desires to adjust the Project Commencement Date for the CR 32 Improvements, as those terms are defined in the AGREEMENT, in order to permit building permits to be obtained within Phase 3 and certificates of occupancy or temporary certificates of occupancy to be issued within Phases 1 through 3; and

**WHEREAS**, the TOWN desires to consent to the adjustment of the Project Commencement Date for the CR 32 Improvements conditioned on DEVELOPER: (1) contributing an equitable share of costs associated with the installation of a future traffic signal and related improvements to be located at the intersection of Weld County Road 5 (WCR 5) and Highway 66; and (2) ensuring that a portion of the Required Collateral that has been posted with the Town in accordance with Paragraph 1.11(h) of the Agreement will continue to be held by the Town pending conditional acceptance of the CR 32 Improvements by the Town.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties hereto promise, covenant and agree as follows:

- A. **Capitalized Terms.** Capitalized terms used herein but not otherwise defined shall have the meaning given them in the AGREEMENT.
- B. **Paragraph 12 Amended.** Paragraph 12 of the AGREEMENT is hereby amended as set forth below. Specifically, deletions are shown in ~~strike through text~~ and additions are shown in **bold and underlined** text.

12. Notwithstanding anything contained in this AGREEMENT to the contrary, DEVELOPER shall construct those certain improvements to County Road 32 as specifically shown and described on Exhibit D attached hereto (the “CR 32 Improvements”). Preliminary cost estimates associated with the CR 32 Improvements are set forth and included in Exhibit

D (“CR 32 Preliminary Cost Estimates”). DEVELOPER covenants and agrees to design and submit plans associated with the CR 32 Improvements to the TOWN prior to the issuance of the 101st building permit for the DEVELOPMENT or prior to the commencement of any development or site work within Phase 2 as indicated on the Phasing Plan approved by the TOWN, whichever first occurs. DEVELOPER further covenants to commence construction of the CR 32 Improvements ~~prior to the commencement of any development or site work within Phase 3~~ **on or before September 1, 2020** (“Project Commencement Date”). If DEVELOPER fails to commence the CR 32 Improvements by the Project Commencement Date, the TOWN shall be permitted to withhold all future building permits within the DEVELOPMENT.

- C. Paragraph 12.1 Amended. Paragraph 12.1 of the AGREEMENT is hereby amended as set forth below. Specifically, deletions are shown in ~~strike through text~~ and additions are shown in **bold and underlined** text.

**12.1** Subject to force majeure and delays caused by the TOWN, DEVELOPER covenants and agrees to complete the CR 32 Improvements and have the same conditionally accepted, subject to ordinary punch list items, by the TOWN ~~within the earlier of~~ **no later than twelve (12) five (5)** months following the Project Commencement Date ~~or prior to DEVELOPER’s commencement of any development or site work within Phase 4~~ (**“Project Completion Date”**). The TOWN shall provide prompt inspection services during the pendency of the construction of the CR 32 Improvements. The TOWN and its consultants and representatives will remain available for consultation for the duration of the completion of the CR 32 Improvements. **The TOWN and the TOWN’s building official, as applicable, shall be authorized to issue certificates of occupancy and temporary certificates of occupancy for homes constructed within Phase 1, Phase 2, and Phase 3 prior to the Project Completion Date in accordance with the provisions of the Mead Residential Code. The DEVELOPER shall provide “as-built” plans to the TOWN for the CR 32 Improvements, in a form acceptable to the Town Engineer. DEVELOPER’s failure to complete the CR 32 Improvements by the Project Completion Date shall constitute a breach of this AGREEMENT and the TOWN shall be authorized to call on the CR 32 Collateral as required by Paragraph 12.7 below, in addition to exercising its rights under Paragraphs 14.1 and 14.16 of this AGREEMENT.**

- D. No Amendment to Paragraphs 12.2, 12.3, 12.4 or 12.5 of the AGREEMENT. No provisions of Paragraphs 12.2, 12.3, 12.4 or 12.5 of the AGREEMENT are amended hereby.

- E. Paragraph 12.6 Added. Paragraph 12.6 is hereby added to the AGREEMENT, to read in full as follows:

**12.6** DEVELOPER shall contribute to the TOWN, within ten (10) business days of the Effective Date of the FIRST AMENDMENT, the sum of SIXTY THOUSAND SIX HUNDRED DOLLARS (\$60,600.00) for the TOWN’s use in defraying the future cost of a traffic signal and related improvements at the intersection of Weld County Road 5 (WCR 5) and Highway 66 (the “FUTURE INTERSECTION IMPROVEMENTS”). The DEVELOPER’s contribution toward the FUTURE INTERSECTION IMPROVEMENTS is supported by the Sorrento Traffic Impact Study, as reviewed and approved by the TOWN, and is based upon the development of 454 lots. The timing of the FUTURE INTERSECTION IMPROVEMENTS shall be determined by the TOWN in its sole discretion.

- F. Paragraph 12.7 Added. Paragraph 12.7 is hereby added to the AGREEMENT, to read in full as follows:

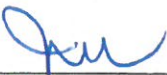
**12.7** As additional consideration for the TOWN agreeing to issue building permits within Phase 3, and the TOWN's building official being authorized to issue certificates of occupancy and temporary certificates of occupancy for homes constructed within Phase 1, Phase 2, and Phase 3 prior to the Project Completion Date of the CR 32 Improvements, DEVELOPER agrees that a portion of the Required Collateral filed with the Town in accordance with Paragraph 1.11(h)(iv) of the AGREEMENT (Irrevocable Letter of Credit # 202008 dated February 12, 2020), specifically one hundred and fifteen percent (115%) of the preliminary cost estimates associated with the CR 32 Improvements and attached to this AGREEMENT as **Exhibit D** or one hundred and fifteen percent (115%) of the then-outstanding CR 32 Improvements, which amount shall be reviewed and verified by the Town Engineer, shall continue to be held by the Town as collateral to secure the completion of the CR 32 Improvements (the "CR 32 Collateral"). Upon completion of the CR 32 Improvements secured by the CR 32 Collateral and issuance of conditional acceptance by the Town, the CR 32 Collateral will be released. No portion of the Project Collateral shall be used for the CR 32 Collateral.

- G. Full Force and Effect. The AGREEMENT remains in full force and effect without any further amendments, alterations or modifications thereto except as expressly set forth in this FIRST AMENDMENT.
- H. Recordation. This FIRST AMENDMENT shall be recorded with the Weld County Clerk and Recorder, and the provisions of this FIRST AMENDMENT shall be binding upon and shall inure to the benefit of the beneficiaries, successors and assigns of the Parties. Recordation shall not occur prior to the Effective Date.
- I. Counterparts. This FIRST AMENDMENT may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this FIRST AMENDMENT as of the date(s) set forth below, to be effective as of the Effective Date.

**DEVELOPER:**

**ENCORE ENERGY INVESTMENTS LLC**, a Nevada limited liability company

By:   
Jeff Mark, Authorized Signing Agent

STATE OF COLORADO                    )  
  )ss.  
COUNTY OF El Paso                )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of March, 2020, by Jeff Mark as Authorized Signing Agent of ENCORE ENERGY INVESTMENTS, LLC, a Colorado limited liability company.

My commission expires: 3-22-21

Witness my hand and official seal.

  
Notary Public

SUSAN L GONZALES  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20044004607  
MY COMMISSION EXPIRES MARCH 22, 2021

LORSON SOUTH LAND CORP., a Colorado corporation

By:   
Jeff Mark, Vice President

STATE OF COLORADO )  
 )ss.  
COUNTY OF El Paso )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of March, 2020, by Jeff Mark as Vice President of LORSON SOUTH LAND CORP., a Colorado corporation.

My commission expires: 3-22-21

Witness my hand and official seal.

SUSAN L GONZALES  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20044004607  
MY COMMISSION EXPIRES MARCH 22, 2021

  
Notary Public

BABCOCK EXCHANGE, LLC, a Colorado limited liability company

By:   
Jeff Mark, Manager

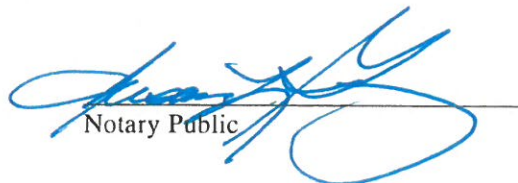
STATE OF COLORADO )  
 )ss.  
COUNTY OF El Paso )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of March, 2020, by Jeff Mark as Manager of BABCOCK EXCHANGE, LLC, a Colorado limited liability company.


My commission expires: 3-22-21

Witness my hand and official seal.

SUSAN L GONZALES  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20044004607  
MY COMMISSION EXPIRES MARCH 22, 2021

  
Notary Public

BABCOCK LAND CORP., a Colorado corporation

By:   
Jeff Mark, Vice President

STATE OF COLORADO )  
 )ss.  
COUNTY OF El Paso )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of March, 2020, by Jeff Mark as Vice President of BABCOCK LAND CORP., a Colorado corporation.

My commission expires: 3.22.21

Witness my hand and official seal.

  
Notary Public

SUSAN L GONZALES  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20044004607  
MY COMMISSION EXPIRES MARCH 22, 2021

[Town signature page follows].



**TOWN OF MEAD**

By:

  
\_\_\_\_\_  
Helen Migchelbrink, Town Manager, *authorized*  
*pursuant to Resolution No. 36-R-2020*

Date of execution: March 21, 2020

**ATTEST:**

By:

  
\_\_\_\_\_  
Town Clerk

