

**TOWN OF MEAD, COLORADO
RESOLUTION NO. 76-R-2023**

**A RESOLUTION OF THE TOWN OF MEAD, COLORADO, GRANTING
CONDITIONAL ACCEPTANCE OF REMAINING PHASE 1 PUBLIC
IMPROVEMENTS FOR POSTLE SUBDIVISION, FILING NO. 1, LOT 2
(PROJECT FROGGER), SPECIFICALLY THE ON-SITE PUBLIC
IMPROVEMENTS AND PHASE 1 OFF-SITE ROW LANDSCAPING
IMPROVEMENTS**

WHEREAS, Mead Industrial Development, LLC, a Colorado limited liability company, and Mead Investors 1, LLC, a Colorado limited liability company (together referred to herein as “Developer”) has caused the completion of certain public improvements benefitting the Postle Subdivision Filing No.1 Final Plat (“Development”), specifically the public improvements associated with Phase 1 on Lot 2 of the Development but excluding the Phase 1 landscape improvements (collectively, the “Phase 1 Improvements”); and

WHEREAS, the Phase 1 Improvements are identified in that certain Subdivision Improvement Agreement dated February 14, 2022, and recorded on March 22, 2022, at Reception No. 4811738 in the Weld County property records (“County records”), as amended by that certain First Amendment to Subdivision Improvement Agreement dated October 10, 2022, and as re-recorded pursuant to that certain Correction to SIA recorded April 27, 2023 at Reception No. 4894960 of the County records (together, the “SIA”); and

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

WHEREAS, the Board of Trustees (“Board”) previously granted conditional acceptance of the Phase 1 Improvements, exclusive of the Phase 1 off-site right-of-way (ROW) landscaping improvements and the on-site improvements identified in *Exhibit J* of the SIA (together, the “Remaining Phase 1 Improvements”), by adoption of Town Resolution No. 18-R-2023 dated March 13, 2023; and

WHEREAS, Developer has requested conditional acceptance of the Remaining Phase 1 Improvements; and

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

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

WHEREAS, the MMC requires the Developer to maintain the Remaining Phase 1 Improvements for a two (2) year period from the date of conditional acceptance and clarifies that the

Developer shall, at its own expense, take all actions necessary to maintain the Remaining Phase 1 Improvements and make needed repairs or replacements that, in the reasonable opinion of the Town (and the Town Engineer), shall become necessary; and

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

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

Section 1. Recitals. The foregoing recitals are incorporated herein by reference as findings and determinations of Board of Trustees.

Section 2. Conditional Acceptance of Remaining Phase 1 Public Improvements. The Board of Trustees on behalf of the Town of Mead, hereby grants “conditional acceptance” of the Remaining Phase 1 Improvements identified in this Resolution and orders the commencement of the two (2) year warranty period to begin on the specific dates set forth below (for each category of Remaining Phase 1 Improvements, the “Date of Conditional Acceptance”):

- Phase 1 off-site ROW landscaping improvements (as specifically identified on page two of Exhibit B of the SIA) – July 12, 2023; and
- On-site improvements identified in Exhibit J of the SIA – May 1, 2023

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

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

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

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

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

INTRODUCED, READ, PASSED, AND ADOPTED THIS 11TH DAY OF DECEMBER 2023.

ATTEST:

TOWN OF MEAD:

By: Mary Strutt
Mary Strutt, Town Clerk

By: Colleen G. Whitlow
Colleen G. Whitlow, Mayor



Exhibit 1

Additional conditions (Conditional Acceptance of Remaining Phase 1 Improvements)

1. Re: Phase 1 off-site ROW landscaping improvements (as specifically identified on page two of Exhibit B of the SIA) – Date of Conditional Acceptance of July 12, 2023. Developer shall replace or reduce LOC NUSCG048553 dated August 10, 2023, in the amount of \$228,021.42 (and having an expiration date of July 11, 2024) (the “LOC”) with a new LOC (or amended LOC) in the form required by the SIA **in the amount of not less than \$179,404** and having an expiration date not earlier than August 12, 2025, being thirty (30) days following the end of the applicable guarantee period (“Amended LOC”). The Developer shall file the Amended LOC with the Town Engineer within sixty (60) days of the effective date of this Resolution. The Amended LOC shall be released in accordance with the terms of the SIA and the *Mead Municipal Code*. Partial releases of the Amended LOC shall be permitted in accordance with the terms and conditions of the SIA.
2. Re: On-site improvements identified in Exhibit J of the SIA – Date of Conditional Acceptance of May 1, 2023. Developer shall maintain LOC NUSCG048554 dated August 10, 2023, in the amount of \$159,952 (and having an expiration date of July 11, 2024) (the “LOC”) and shall not permit the LOC to expire prior to June 1, 2025, being thirty (30) days following the end of the applicable guarantee period. The LOC shall be released in accordance with the terms of the SIA and the *Mead Municipal Code*.



December 12, 2023

Mr. Nate Weigel, Project Manager
BROE Real Estate Group
252 Clayton Street
Denver, Colorado 80206

RE: Conditional Acceptance of Postle Subdivision, Filing No. 1 – Phase 1 (Lot 2, aka “Project Frogger”) – Remaining Phase 1 Public Improvements

Dear Mr. Weigel,

This letter confirms the Conditional Acceptance of certain remaining on-site and off-site public improvements associated with Project Frogger, including:

- Phase 1 off-site right-of-way (ROW) landscaping improvements, and
- Phase 1 on-site improvements

(together, the “Remaining Phase 1 Improvements”).

Resolution No. 76-R-2023 dated December 11, 2023 (the “Resolution”) memorializes the Board’s conditional acceptance of the Remaining Phase 1 Improvements. A copy of the Resolution is attached to this letter for your project file.

All Phase 1 Improvements are identified in that certain Subdivision Improvement Agreement dated February 14, 2022, and recorded on March 22, 2022, at Reception No. 4811738 in the Weld County property records (“County records”), as amended by that certain First Amendment to Subdivision Improvement Agreement dated October 10, 2022, and as re-recorded pursuant to that certain Correction to SIA recorded April 27, 2023 at Reception No. 4894960 of the County records (together, the “SIA”).

The Board of Trustees previously granted conditional acceptance of the Phase 1 Improvements, exclusive of the Remaining Phase 1 Improvements, by adoption of Town Resolution No. 18-R-2023 dated March 13, 2023 (the “Prior Resolution”).



The attached Resolution memorializes the Board’s Conditional Acceptance of the Remaining Phase 1 Improvements, effective on the specific dates set forth in the Resolution and set forth below for your reference:

- Phase 1 off-site ROW landscaping improvements (as specifically identified on page two of Exhibit B of the SIA) – Date of Conditional Acceptance of **July 12, 2023** (“Off-Site Landscaping Improvements”), and
- On-site improvements identified in Exhibit J of the SIA – Date of Conditional Acceptance of **May 1, 2023** (“On-Site Improvements”).

Please note that the 2-year warranty period for the Off-Site Landscaping Improvements commenced on July 12, 2023 and the 2-year warranty period for the On-Site Improvements commenced on May 1, 2023. During the warranty period, the developer shall, at developer’s own expense, take all actions necessary to maintain the Phase 1 Improvements and make needed repairs or replacements that, in the reasonable opinion of the Town, shall become necessary.

No sooner than sixty (60) days, and at least thirty (30) days, before the end of the applicable 2-year warranty periods, and during the growing season (May 1 through October 31), the Developer shall request an inspection of the Remaining Phase 1 Improvements. Once the Remaining Phase 1 Improvements are judged by the Town to be in satisfactory condition, the Town shall grant Final Acceptance of Remaining Phase 1 by resolution of the Board of Trustees.

Please also note that the Resolution requires a minor amendment to LOC NUSCG048553 dated August 10, 2023, in the amount of \$228,021.42. Specifically, **Exhibit 1** of the Resolution requires the developer to “. . . replace or reduce LOC NUSCG048553 dated August 10, 2023, in the amount of \$228,021.42 (and having an expiration date of July 11, 2024) (the “LOC”) with a new LOC (or amended LOC) in the form required by the SIA in the amount of not less than **\$179,404** and having an expiration date not earlier than August 12, 2025, being thirty (30) days following the end of the applicable guarantee period (“Amended LOC”).”

While a replacement of the above-referenced LOC is authorized, it may be most convenient for the developer to request JPMORGAN CHASE BANK, N.A. to process an amendment reducing the amount of the LOC by \$48,617.42 (to a revised face amount of \$179,404).



There is no amendment to LOC NUSCG048554 dated August 10, 2023, in the amount of \$159,952 required.

Should you have any questions regarding this letter, please don't hesitate to call or email.

Sincerely,

Robyn Brown, P.E.
Deputy Town Engineer

ATTACHMENTS:

Resolution No. 76-R-2023 dated December 11, 2023