

**TOWN OF KEYSTONE
Summit County, Colorado**

RESOLUTION 2024-61

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO,
APPROVING A SUBDIVISION IMPROVEMENTS AGREEMENT (“SIA”) FOR INA’S
WAY RESIDENCES SUBDIVISION, LOCATED AT 96 RIVER RUN ROAD**

WHEREAS, the Town of Keystone (“Town”) is a home rule municipality governed by the Keystone Home Rule Charter; and

WHEREAS, per the Town’s Land Use Code, the Town of Keystone is required to have a Subdivision Improvements Agreement for these types of developments; and

WHEREAS, the Town Council finds it in the best interest of the Town to execute the Subdivision Improvements Agreement to secure the approved improvements associated with the development.

Now, Therefore, be it Resolved by the Town Council of the Town of Keystone, Colorado, that:

Section 1. Town Council approves the Subdivision Improvement Agreement in substantially the form that is attached as Exhibit A. The Town Manager is authorized to execute the agreement and is authorized to make any non-material changes in consultation with the Town Attorney.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the Town Council.

ADOPTED by a vote of 5 in favor and 0 against, this 10th day of September 2024.

Signed by:
By: Kenneth D. Riley
Kenneth D. Riley, Mayor

ATTEST:

Approved as to Form:

DocuSigned by:
By: Madeline Sielw
Town Clerk

Signed by:
By: Jennifer Madsen
Town Attorney

TOWN OF KEYSTONE
SUBDIVISION IMPROVEMENTS AGREEMENT

TOK24-005

This Agreement is made as of this 20th day of November, 2024 between Inas Way Properties, LLC, C/O Aaron Cohenour (Owner/Developer), whose address is 820 S. Mustang Rd., Yukon, OK 73099 and the TOWN COUNCIL OF THE TOWN OF KEYSTONE (Town), whose address is 1628 Sants John Rd, Colorado 80435, Attention: Town Community Development Director

I. GENERAL

1.1 **Purpose.** The purpose of this Agreement is to provide for the completion of the Subdivision Improvements as hereinafter defined, for the Subdivision, as hereinafter defined.

1.2 **Recitals.**

(a) Owner/Developer is the owner and subdivider of the Subdivision and has presented a final plat of the Subdivision to the Town for approval.

(b) The Town of Keystone Land Use Code, Ordinance No. 2024-O-05, Section 8109, authorize the execution of a subdivision improvements agreement between the Town and Owner/Developer whereby Owner/Developer agrees to construct any required public improvements for the Subdivision and to provide security for completion of the Subdivision Improvements.

(c) This Agreement will provide for the completion of the Subdivision Improvements within the Subdivision and will protect the Town from the cost of completing the Subdivision Improvements.

(d) This Agreement is not executed for the benefit of third parties such as, but not limited to, materialmen, laborers or others providing work, services or material for the Subdivision Improvements or lot or home buyers in the Subdivision.

1.3 **Subdivision.** The "Subdivision" shall mean Ina's Way Residences Subdivision, Town of Keystone, Colorado, the final plat for which has been presented to the Town and is expected to be approved by the Town at the time of, and in connection with, approval of this Agreement by the Town.

1.4 **Subdivision Improvements.** The "Subdivision Improvements" shall mean the street, drainage and other improvements listed on attached Exhibit A, and improvements described in the Plans, as hereinafter defined. Exhibit A shall include estimated costs and completion dates for the Subdivision Improvements.

1.5 **Plans.** The "Plans" shall mean the Subdivision Improvement Plans approved by the Community Development Director or designee and the Town Council, which Plans shall include grading, drainage, erosion control, revegetation, road improvement and composite utility plans.

II. CONSTRUCTION OF SUBDIVISION IMPROVEMENTS.

2.1 **Agreement to Construct.** Subject to and in accordance with the terms and provisions of this Agreement, Owner/Developer agrees to cause the Subdivision Improvements to be constructed and completed at its expense, in accordance with the Plans.

2.2 **Final Plat Approval as Condition of Construction.** Owner/Developer shall not commence construction and installation of the Subdivision Improvements until the Town has given its approval to the final plat of the Subdivision.

2.3. **Recordation of Final Plat.** This Agreement must be entered into prior to recordation of the final plat in the Town of Keystone. The final plat shall not be recorded until either the Subdivision Improvements have been

satisfactorily completed or until the receipt by the Town of security in a form acceptable to the Town for 115% of the estimated construction costs of said Subdivision Improvements as identified on Exhibit A of this Agreement.

2.4 Completion Date. Subdivision Improvements shall be completed within the time limits set forth on the attached Exhibit A ("Completion Date"). The Completion Date may only be extended for good cause, as determined by and approved by the Town of Keystone Planning Department in writing.

2.5 Construction Standards. The Subdivision Improvements, including water and sanitary sewer, shall be constructed in accordance with the Plans approved by the Town Development Director or designee and/or applicable District and, to the extent not otherwise provided in the Plans, in accordance with the Town's ordinances, resolutions, and regulations.

2.6 Warranties of Owner/Developer. Owner/Developer warrants that the Subdivision Improvements will be installed in a good and workmanlike manner and in substantial compliance with the Plans and requirements of this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Owner/Developer shall remain in force and effect as to any completed Subdivision Improvements until the lapse of two years after Preliminary Acceptance of the Subdivision Improvements as hereinafter provided in this Agreement.

2.7 Title of Subdivision Improvements. All Subdivision Improvements shall be constructed within streets or easements or as otherwise shown on Plans dedicated to the Town in the final plat of the Subdivision or conveyed by other recorded instruments at the time the final plat is recorded. Subdivision Improvements for roads shall be in accordance with the Town of Keystone's Road and Bridge Design and Construction Standards. Title to the property shown on the final plat shall be vested, at the time the final plat is presented to the Town for approval, in Owner/Developer and any other parties executing the final plat and shall be certified by a title company's or attorney's certificate shown on the final plat.

III. SECURITY FOR COMPLETION.

3.1 Deposit of Security for Owner/Developer Obligations. To secure the performance of the obligations of Owner/Developer under this Agreement to complete the Subdivision Improvements for the Subdivision, Owner/Developer shall deposit with the Town an irrevocable letter of credit with provisions as hereinafter set forth, or a cash deposit or other financial guarantee deemed adequate by the Town ("Security"). The Security shall be deposited after approval of the final plat for the Subdivision and shall be 115% of the estimated cost to construct the Subdivision Improvements which the Owner/Developer desires to construct. No conveyance or transfer of title to any lot(s), tract(s) of land within the Subdivision with uncompleted Subdivision Improvements shall be made, nor any building permit issued, unless the approved Security has been deposited with the Town or unless all public improvements have been completed and Security in the amount of 15% of the estimated cost of said improvements has been deposited with the Town as provided in Section 4.2 below. The Security shall be retained by the Town until satisfaction of Owner/Developer's obligations under this Agreement or earlier release by the Town.

3.2 Provisions for Letter of Credit. If an irrevocable letter of credit is provided as Security, such letter for credit shall be in an amount equal to 115% of the estimated cost to construct the Subdivision Improvements. The letter of credit shall be issued from _____, or such other bank as shall be approved by the Town; shall have an expiration date no earlier than two years after its date of issue; and shall provide that it may be drawn upon from time to time by the Town in such amount or amounts as the Town may designate as justified, such amounts not to exceed, in the aggregate, the amount of the letter of credit. Draws under any such letter of credit shall be by a certificate signed by the Town Manager of the Town of Keystone stating that the Town is entitled to draw the specified amount under the terms of this Agreement. The right of the Town to draw on any letter of credit shall be as provided in, and subject to, the provisions of Sections 5.1 through 5.6 of this Agreement.

3.3 Recording of Agreement. After approval of the final plat of the Subdivision by the Town, this Agreement may, at the option and expense of the Town, be recorded in the office of the Clerk and Recorder of Summit County. Upon Final Acceptance of all of the Subdivision Improvements by the Town, the Town shall deliver to Owner/Developer a recordable executed document which shall release all property within the Subdivision from any further effect of this Agreement.

IV. ACCEPTANCE OF IMPROVEMENTS.

4.1 **Preliminary/Partial Acceptance.** Upon the satisfactory completion of any of the specific Subdivision Improvements listed in Exhibit A, Owner/Developer shall be entitled to obtain preliminary acceptance thereof by the Town ("Preliminary Acceptance") in accordance with the following provisions.

a) Upon such partial completion, Owner/Developer shall give written notice to the Community Development Director or designee requesting an inspection of the completed Subdivision Improvements ("Preliminary Inspection Notice"). The Town shall inspect the completed Subdivision Improvements within fourteen days after receipt by the Community Development Director or designee of the Preliminary Inspection Notice and, if the Community Development Director or designee finds that the specified improvements have been completed substantially in accordance with the Plans and the other requirements of this Agreement, the Community Development Director or designee shall issue a letter evidencing Preliminary Acceptance within fourteen days after the inspection. The Town's duty to inspect within fourteen days shall be extended, if necessary, due to weather or winter conditions causing inspection to be impractical or impossible.

b) If, upon inspection of the completed Subdivision Improvements, the Community Development Director or designee finds that the specified improvements have not been completed substantially in accordance with the Plans and the other requirements of this Agreement, the Community Development Director or designee shall issue a written notice of noncompliance within fourteen days after the inspection specifying the respects in which the completed Subdivision Improvements have not been completed substantially in accordance with the Plans and the other requirements of this Agreement. Owner/Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Preliminary Inspection Notice to the Community Development Director or designee. Upon the giving of such a new Preliminary Inspection Notice, the foregoing provisions of this Section 4.1 shall apply.

c) Length of Guarantee Period: In order to insure that successful, stable plant establishment is achieved, all landscape planting shall be subject to a guarantee period of two years from the date installation is completed except, where planting, seeding, or revegetation is done on 3.33:1 or greater slopes, the initial guarantee period shall be three years.

4.2 **Partial Release of Security.** At the time of Preliminary Acceptance of any specific completed work items listed in Exhibit A, the Town shall issue a written release of the Security and the plat restriction provided in Section 3.1. The amount to be released for the completed Subdivision Improvements shall be the total amount of the Security for each completed work item, provided sufficient amounts exist on deposit for completion of the remaining incomplete Subdivision Improvements. A Warranty Security in the amount of 15% of the total cost of such work items shall remain on deposit with the Town until final acceptance of the completed subdivision improvements.

a) Prior to the release of any financial guarantee for landscape improvements, the Town must determine that revegetation of the site is essentially free from weeds as identified by the Town as invasive, noxious or otherwise nuisance weed species."

4.3 **Maintenance Prior to Final Acceptance.** Until Final Acceptance by the Town of the Subdivision Improvements, Owner/Developer shall, at Owner/Developer's expense, make all needed repairs or replacements to the Subdivision Improvements required on account of defects in materials or workmanship and shall be responsible for ordinary repairs and maintenance thereof including street sanding, snow removal, cleaning and sewer drainage. Owner/Developer shall have the rights to assign such maintenance obligations of the Subdivision Improvements to a homeowners association for the Subdivision.

4.4 **Final Acceptance.** Upon final completion of the Subdivision Improvements, Owner/Developer shall be entitled to obtain final acceptance thereof by the Town ("Final Acceptance") in accordance with the following provisions.

a) No later than 60 days prior to the expiration of the warranty period for any phase of the Subdivision Improvements, Owner/Developer shall give written notice to the Community Development Director or designee requesting a final inspection of such phase of the Subdivision Improvements ("Final Inspection Notice"). The Town shall inspect such phase of the Subdivision Improvements within fourteen days after receipt by the Community Development

Director or designee of the Final Inspection Notice and, if the Community Development Director or designee finds that the phase of the Subdivision Improvements is substantially free of defects in materials and workmanship and has been repaired and maintained as and to the extent required in this Agreement, the Community Development Director or designee shall issue a letter evidencing Final Acceptance of the phase of the Subdivision Improvements. Again, the Town may extend the inspection period due to weather and seasonal snow conditions.

b) If, upon final inspection of a phase of the Subdivision Improvements, the Community Development Director or designee finds that the phase of the Subdivision Improvements is not substantially free of defects in materials and workmanship or has not been repaired and maintained as required under this Agreement, the Community Development Director or designee shall issue a written notice of noncompliance within fourteen days after the final inspection specifying the respects in which the Subdivision Improvements are not substantially free of defects in materials and workmanship or have not been repaired and maintained as required under this Agreement. Owner/Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Final Inspection Notice to the Community Development Director or designee. Upon the giving of such new Final Inspection Notice, the foregoing provisions of this Section 4.4 shall apply.

c) At the time of Final Acceptance of the Subdivision Improvements, Owner/Developer shall be entitled to a release of the Warranty Security for that phase. The release shall be in writing, signed by the Community Development Director or designee.

d) Upon Final Acceptance of the Subdivision Improvements, the Town may, at its sole discretion, assume full responsibility for repairs and maintenance of the Subdivision Improvements as would normally be the responsibility of the Town by law.

e) Prior to Final Acceptance of all of the Subdivision Improvements, "as constructed" engineering drawings shall be submitted to the Town in accordance with Town policy.

V. DEFAULTS AND REMEDIES

5.1 **Default by Owner/Developer.** A default by Owner/Developer shall exist after notice and an opportunity to cure as hereinafter provided if (a) Owner/Developer fails to construct the Subdivision Improvements in substantial compliance with the Plans and the other requirements of this Agreement; (b) Owner/Developer fails to complete construction of the Subdivision Improvements by the Completion Date provided herein; (c) Owner/Developer fails to cure any noncompliance specified in any written notice of noncompliance within a reasonable time after receipt of the notice of noncompliance; (d) Owner/Developer otherwise breaches or fails to comply with any obligation of Owner/Developer under this Agreement; (e) Owner/Developer becomes insolvent, files a voluntary petition in bankruptcy, is adjudicated a bankrupt pursuant to an involuntary petition in bankruptcy, or a receiver is appointed for Owner/Developer; (f) Owner/Developer fails to maintain in full force and effect the Security in the amounts specified in this Agreement. Notice of default as to the Subdivision Improvements must be given prior to expiration of the warranty period for such Subdivision Improvements as hereinafter provided.

5.2 **Notice of Default.** In the event a default by Owner/Developer is believed to exist, the Town shall give written notice thereof to Owner/Developer, specifying the default and specifying a reasonable time within which Owner/Developer shall be required to cure the default.

5.3 **Remedies of Town.** If Owner/Developer fails to cure such default within the time specified by the Town, the Town shall be entitled to (a) make a draw on the Security for the amount reasonably determined by the Town to be necessary to cure the default in a manner consistent with the approved Plans up to the amount of the Security; and (b) sue the Owner/Developer for recovery of any amount necessary to cure the default over and above the amount available under the Security, including court costs, witness fees and reasonable attorneys' fees; and (c) any other remedy at law or equity.

5.4 **Town Right to Complete Subdivision Improvements.** In the event of a default by Owner/Developer which is uncured, the Town shall have the rights to complete or cause completion of the Subdivision Improvements as herein provided. The Town shall have the right to complete the Subdivision Improvements, in substantial accordance with the Plans, the estimated construction costs, and other requirements of this Agreement, either itself or by contract

with a third party or by assignment of its rights to a successor Owner/Developer who has acquired the Subdivision by purchase, foreclosure, or otherwise. The Town, any contractor under the Town, or any such successor Owner/Developer, their agents, subcontractors and employees shall have the non-exclusive right to enter upon the streets and easements shown on the final plat of the Subdivision and upon any part of the Subdivision owned by Owner/Developer for the purpose of completing the Subdivision Improvements.

5.5 Use of Funds by Town. Any funds obtained by Town as Security, or recovered by the Town from Owner/Developer by suit or otherwise, shall be used by the Town to pay the costs of completion of the Subdivision Improvements substantially in accordance with the Plans and the other requirements of this Agreement and to pay the reasonable costs and expenses of the Town in connection with the default by Owner/Developer, including costs, witness fees and reasonable attorneys' fees, with the surplus, if any, to be returned to Owner/Developer. Provided, however, that any funds or rights to such funds obtained may at the Town's option be assigned or otherwise directed to the account of any third party for the purpose of completing the Subdivision Improvements.

VI. MISCELLANEOUS.

6.1 Indemnification. Owner/Developer shall indemnify and save harmless the Town from (a) any and all suits, actions, claims, judgements, obligations, or liabilities of every nature and description which arise from an event or occurrence prior to the date of Final Acceptance of the Subdivision Improvements and which are caused by, arise from, or on account of Owner/Developer's obligations under this Agreement; and (b) any and all suits, actions, claims, or judgments which arise from an event or occurrence prior to the date of the Final Acceptance and which are asserted by or on behalf of contractors or subcontractors working in the Subdivision, lot owners in the Subdivision, or third parties claiming injuries resulting from defective improvements constructed by Owner/Developer. This indemnification shall not apply to claims arising from the negligent acts or omissions of Town. Owner/Developer shall pay any and all judgements rendered against the Town on account of any such suit, action, or claim, together with all reasonable expenses and attorneys' fees incurred by the Town in defending such suit, action, or claim. The Town shall, within fifteen days after being served with any such claim, suit, or action, provide Owner/Developer with a copy of the complaint. The Owner/Developer may provide proper legal representation for the Town in said action, in which case the Owner/Developer shall not be responsible for any additional legal fees incurred by the Town. The Town agrees that the Owner/Developer may also, on its own behalf, become a party to any such action and the Town agrees to execute any documents as may be necessary to allow the Owner/Developer to be a party.

6.2 Insurance. Owner/Developer shall require that all contractors engage in the construction of the Subdivision Improvements maintain Worker's Compensation insurance. Before proceeding with the construction of improvements, Owner/Developer shall provide the Community Development Director or designee with written evidence of property damage insurance and bodily injury insurance in an amount of not less than Nine Hundred and Ninety Thousand Dollars (\$990,000) each, or such other maximum amount of liability as may be specified in the Colorado Governmental Immunity Act, and protecting the Town against any and all claims for damages to persons or property resulting from construction and/or installation of any Subdivision Improvements pursuant to this Agreement. The policy shall provide that the Town shall be notified at least thirty days in advance of any reduction in coverage, termination, or cancellation of the policy. Such notice shall be sent by certified mail to the Community Development Director or designee, return receipt requested. Owner/Developer agrees that any contractors engaged by or for Owner/Developer to construct the Improvements shall maintain public liability coverage in limits not less than those described above.

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

6.4 Assignability. Subject to the provisions of Section 3.1 above, Owner/Developer may convey or transfer title or interests in the Subdivision without the consent of the Town and a grantee or transferee of Owner/Developer shall not be obligated to fulfill any of the obligations of Owner/Developer under this Agreement unless such grantee or transferee is the successor or assignee of Owner/Developer in its capacity as Owner/Developer of the Subdivision. Owner/Developer may assign its rights and obligations under this Agreement to a party who is the successor or assignee of Owner/Developer in its capacity as Owner/Developer of the Subdivision without the consent of the Town; provided, however, that (a) Owner/Developer notifies the Town of the assignment and of the name and address of the successor Owner/Developer; and (b) the successor Owner/Developer assumes the obligations of Owner/Developer under

this Agreement. Unless otherwise agreed to in writing by Town, Owner/Developer shall remain liable for performance of the obligations of Owner/Developer under this Agreement. The Town shall release Security furnished by Owner/Developer if the Town accepts new security from any successor Owner/Developer of the Subdivision.

6.5 No Automatic Further Approvals. Execution of this Agreement by the Town shall not be construed as a representation or warranty that Owner/Developer is entitled to any other approvals required from the Town, if any, before Owner/Developer is entitled to commence development of the Subdivision or to transfer ownership of property in the Subdivision.

6.6 Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposit for delivery in an overnight courier service such as Federal Express; or (c) three business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other party:

If to Owner/Developer: Ina's Way Properties, LLC

Attn: Aaron Cohenour
820 S. Mustang Rd.
Yukon, OK 73099

If to Town:

Town of Keystone Government
Attn: Community Development Director or designee
1628 Sants John Rd
Keystone, Colorado 80435

6.7 Further Assurances. At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

6.8 Binding Effect. Subject to Section 6.4 above, this Agreement shall run with the land and binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.9 Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

6.10 No Implied Waivers. The failure by a party to enforce any provision of this Agreement or the waiver of any specific requirement of this Agreement shall not be construed as a general waiver of this Agreement or any provision herein nor shall such action act to stop the party from subsequently enforcing this Agreement according to its terms.

6.11 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole or any part thereof other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

6.12 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall constitute a waiver of the sovereign immunity of the Town under applicable state law.

6.13 Agent/Employee. The Owner/Developer is not an agent or employee of the Town.

6.14 Consent to Jurisdiction and Venue. Personal jurisdiction and venue of any civil action commenced by either party to this Agreement with respect to this Agreement of a letter of credit shall be proper only in such action is commenced in the District Court for Summit County, Colorado. Owner/Developer expressly waives the right to bring such action in or to remove such action to any other court, whether state or federal.

6.15 Entire Agreement. This Agreement, and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OWNER/DEVELOPER: Ina's Way Properties, LLC

SIGNATURE: *Aaron Cohenour*

PRINT NAME: Aaron Cohenour

TITLE: Manager

STATE OF COLORADO)
)SS.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me on this 22nd day of November
2020 by Aaron Cohenour as Manager of Ina's Way Properties, LLC
(Name of Signer) (Title of Signer) (Name of Owner/Developer)

Witness my hand and official seal:

Sharon Crangle
Notary Public

SHARON CRANGLE
Notary Public
State of Colorado
Notary ID # 19874042073
My Commission Expires 10-26-2026

My commission Expires: 10-26-26

ATTEST:

TOWN OF KEYSTONE

BY: _____
Madeliene Sielu, Town Clerk

BY: _____
Kenneth D. Riley, Mayor

Exhibit A

Ina's Way Residences – Landscaping Improvements

| ITEM NO. | ITEM | UNIT | QUANTITY | UNIT COST | TOTAL COST |
|----------|-------------|------|----------|---------------|-------------------|
| 1 | Landscaping | N/A | Per Plan | \$8,280 | \$8,280.00 |
| | | | | Total: | \$8,280.00 |

LOC Required

\$8,280.00