

**TOWN OF KEYSTONE
Summit County, Colorado**

RESOLUTION 2024-65

**A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF KEYSTONE, COLORADO,
APPROVING A SITE PLAN IMPROVEMENTS AGREEMENT (“SPIA”) FOR CAMBER
TOWNHOMES, LOCATED AT 0624 MONTEZUMA 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 Site Plan Improvements Agreement for these types of developments; and

WHEREAS, the Town Council finds it in the best interest of the Town to execute the Site Plan 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 Site Plan Improvement Agreement in substantially the form that is attached as Attachment 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 7 in favor and 0 against, this 24th day of September 2024.

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

ATTEST:

Approved as to Form:

DocuSigned by:
By: Madeleine Siegel
Town Clerk

Signed by:
By: Jennifer Madson
Town Attorney

**SITE PLAN IMPROVEMENTS AGREEMENT
FOR
DEVELOPMENT
SPECIFIC TO**

CAMBER TOWNHOMES, TOK24-002

THIS AGREEMENT is made as of this 24 day of September, 2024 between 624 Montezuma Rd, LLC ("Owner/Developer"), whose address is 2700 S. Broadway Ste. 200, Englewood, CO 80113, and the Town Council of the Town of Keystone ("Town"), whose address is 1628 Saints John Road, Keystone, Colorado 80435, Attention: Community Development Department and Town Review Authority.

I. GENERAL

1.1 Owner/Developer has submitted a site plan application for the property located at 624 Montezuma Road, Keystone, Colorado and received the Town's site plan approval dated June 27, 2024 (hereafter referred to as the "Site Plan").

1.2 Certain site plan improvements and other easements are required by the Keystone Community Development Department for the benefit of owners within and adjacent to a site plan area or are required by the Town to properly address access, drainage, traffic, landscaping, road improvements, grading, and erosion control. The site plan improvements and easements required for this Site Plan are listed on Exhibit A, which is attached hereto and incorporated herein, and may hereafter be referred to as the "Site Plan Improvements" or "Improvements".

1.3 This Agreement will provide for the completion of the Site Plan Improvements on Owner/Developer's project, and will serve to protect the Town from the cost of completing such Site Plan Improvements.

1.4 This Agreement is not executed for the benefit of third parties including, but not limited to, material, laborers or others providing work, services or material for the Site Plan Improvements.

II. CONSTRUCTION OF IMPROVEMENTS

2.1 Agreement to Construct Improvements and Grant Easements. Subject to and in accordance with the terms and provisions of this Agreement, Owner/Developer agrees to cause the Improvements to be constructed and completed, together with the easement(s) granted to the Town at Owner/Developer's expense, in accordance with the provisions of this Agreement. Such compliance shall be determined by the Keystone Community Development Department.

2.2 Building and Grading Permits/Certificates of Occupancy. Building permits and grading permits for the site shall not be issued until this Agreement is fully executed. Certificates of Occupancy shall not be issued until easements have been granted and the Improvements have been completed, or security for completion of the Improvements is provided to the Town, as provided for herein.

2.3 Construction Standards. The Improvements shall be constructed in accordance with this Agreement, the approved Site Plan, and the Town's resolutions, regulations, standards and specifications. Prior to the initiation of construction of any Improvements listed in Exhibit A, construction drawings or plans for such Improvements must be submitted to the Town Review Authority through the Town's review process, including the payment of required fees.

Attachment A

2.4 Completion Date. The Site Plan 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 in writing.

2.5 Warranties of Owner/Developer. Owner/Developer warrants that the Improvements will be installed in a good, workmanlike manner in compliance with the construction drawings or plans and requirements of this Agreement, and shall be substantially free of defects in materials and workmanship. Items constructed within the Town right-of-way shall be warranted for a period of two years following the issuance of the first Certificate of Occupancy for any building on the site.

2.6 Maintenance Prior to End of Warranty Period. Until the end of the warranty period, Owner/Developer shall, at Owner/Developer's expense, make all needed repairs or replacements to the Improvements. Owner/Developer may assign its obligations for ordinary repairs and maintenance of the Improvements, but the Owner/Developer shall remain obligated to the Town for the proper performance of such repairs and maintenance.

2.7 Title to Subdivision Improvements. Improvements constructed in the public right-of-way shall be owned by the Town, except that the maintenance of curb and gutter, cross-pans and pavement (or other roadway surface) within the access to the site shall remain with the Owner/Developer.

III. SECURITY FOR COMPLETION OF IMPROVEMENTS

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 Improvements, 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 Site Plan and shall be 115% of the estimated cost to construct the Improvements which the Owner/Developer is required to construct. Such estimated cost shall be reasonably determined by the Town in its sole discretion. No conveyance or transfer of title to any lot, lots, tract or tracts of land within the Site Plan shall be made, nor any Certificates of Occupancy or building permits issue, unless (a) the approved Security has been deposited with the Town or (b) all improvements have been completed and a deposit in the amount of 15 percent of the estimated cost of said Improvements has been made with the Town ("Guaranty"). The Guaranty 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 Improvements, as determined by the Town in its sole discretion. 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 Mayor or Mayor Pro Tem of the Town Council of the Town of Keystone stating that the Town is entitled to draw the specified amount under the terms of this Agreement.

3.3 Certificate of Occupancy. Until the Improvements are completed or secured for the site in compliance with the Town approved Site Plan, and all necessary easements have been granted, the Town is under no obligation to issue a Certificate of Occupancy for any building on the site, nor shall the Owner/Developer make application for said Certificate of Occupancy.

3.4 Recording Agreement. After approval of this Agreement 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 issuance of a Certificate of Occupancy and satisfactory completion of Improvements for any building on this site, except with respect to warranties described herein, the Town shall deliver to Owner/Developer (if requested by

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Owner/Developer) a recordable executed document which shall release all property (within the applicable phase, if a multi-phased Site Plan Application) within the Site Plan Application 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 Site Plan Improvement work items 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 Town Review Authority requesting an inspection of the completed Site Plan Improvements ("Preliminary Inspection Notice"). The Town shall inspect the completed Site Plan Improvements within fourteen days after receipt by the Town Review Authority of the Preliminary Inspection Notice and, if the Town Review Authority finds that the specified improvements have been completed substantially in accordance with the Site Plan and the other requirements of this Agreement, the Town Review Authority 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 Site Plan Improvements, the Town Review Authority finds that the specified improvements have not been completed substantially in accordance with the Site Plan and the other requirements of this Agreement, the Town Review Authority shall issue a written notice of noncompliance within fourteen days after the inspection specifying the respects in which the improvements have not been completed substantially in accordance with the Site Plan 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 Town Review Authority. 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 ensure 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 provided in Section 3.1. The amount to be released for the completed Site Plan 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 Site Plan Improvements. An Owner/Developer guaranty in the amount of 15% of the total cost of such work items that have been preliminarily accepted ("Guaranty") shall remain on deposit with the Town until satisfaction of the Owner/Developer's obligations under this Agreement.

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 Final Acceptance. Upon final completion of the Site Plan 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 Site Plan Improvements, Owner/Developer shall give written notice to the Town Review Authority requesting a final inspection of such phase of the Site Plan Improvements ("Final Inspection Notice"). The Town shall inspect such phase of the Site Plan Improvements within fourteen days after receipt by the Town Review Authority of the Final Inspection Notice and, if the Town Review Authority finds that the phase of the Site Plan Improvements is substantially free of defects in materials and workmanship and has been repaired and maintained as and to the extent

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required in this Agreement, the Town Review Authority shall issue a letter evidencing Final Acceptance of the phase of the Site Plan 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 Site Plan Improvements, the Town Review Authority finds that the phase of the Site Plan Improvements is not substantially free of defects in materials and workmanship or has not been repaired and maintained as required under this Agreement, the Town Review Authority shall issue a written notice of noncompliance within fourteen days after the final inspection specifying the respects in which the Site Plan 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 Town Review Authority. 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 Site Plan Improvements, Owner/Developer shall be entitled to a release of the Guaranty for that phase. The release shall be in writing, signed by the Town Review Authority.

V. DEFAULTS AND REMEDIES

5.1 Default by the 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 cure any noncompliance specified in any written notice of noncompliance within a reasonable time after receipt of the notice of noncompliance; and (b) Owner/Developer otherwise breaches or fails to comply with any obligation of Owner/Developer under this Agreement. Notice of Default as to Improvements must be given prior to expiration of the warranty period for such phase of the 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 Site 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. 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 site for the purpose of completing the Site Plan Improvements.

VI. MISCELLANEOUS

6.1 Indemnifications. Owner/Developer shall indemnify and save harmless the Town from (a) any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from an event or occurrence prior to the date of Final Acceptance and which are caused by, arise from or on account of the construction and installation of the Improvements; 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 Site Plan Application Area, lot owners in the Site Plan Application area, 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 judgments 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 defending such suit, action or claim. The Town shall, within fifteen (15) days after being served with any claim, suit, or action, provide Owner/Developer with a copy of the complaint. The Owner/Developer may provide proper legal representation for

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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 engaged in the construction of the Improvements maintain Worker's Compensation insurance. Before proceeding with the construction of Improvements, Owner/Developer shall provide the Town Review Authority with written evidence of property damage insurance and bodily injury insurance in an amount of not less than Nine Hundred 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 Improvements pursuant to this Agreement. The policy shall provide that the Town shall be notified at least thirty (30) days in advance of any reduction in coverage, termination, or cancellation of the policy. Such notice shall be sent by certified mail to the Town Review Authority, 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 persons or entity, other than a party to this Agreement shall have any right of action under this Agreement, including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services, or materials for the Improvements.

6.4 Assignability. Owner/Developer may convey or transfer title or interest in the Site without the written 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 Site Plan. 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 Site Plan Application without the consent of the Town; provided, however, that (a) Owner/Developer provides prior notification to 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 in writing by Town and in spite of any assignment, Owner/Developer shall remain liable for performance of the obligations of Owner/Developer under this Agreement.

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 Improvements or to transfer ownership of property in the Site Plan Application.

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 (3) business days after the 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:
624 Montezuma Rd., LLC
2700 S Broadway #200
Englewood, CO 80113

If to the Town:
Town of Keystone
ATTN: Community Development Department
1628 Saints John Road
Keystone, CO 80435

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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 5.4 above, this Agreement shall run with the land and be 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 Consent to Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement with respect to this Agreement or a letter of credit shall be proper only if 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.

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

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.

Signature Page to Follow

Attachment A

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

624 MONTEZUMA RD LLC
(Name of Owner/Developer)

By: [Signature]

Print Name: MATTHEW MUELLER

Title: AUTHORIZED REPRESENTATIVE

STATE OF COLORADO)

) ss.

COUNTY OF SUMMIT)

The foregoing was acknowledged before me this 1 day of October, 2024,

by Matthew Mueller as Authorized Representative,

of 624 Montezuma Rd LLC

Witness my hand and official seal:

My commission expires: 07/09/2028

[Signature]
Notary Public

BRIAN RANDALL
Notary Public
State of Colorado
Notary ID # 20244025400
My Commission Expires 07-09-2028

TOWN COUNCIL
OF THE TOWN OF KEYSTONE

By: [Signature]
John Cronc, Town Manager

EXHIBIT A

CAMBER TOWNHOMES INFRASTRUCTURE IMPROVEMENTS

ITEM NO.	ITEM	UNIT	QUANTITY	UNIT COST	TOTAL COST
1	CLEARING & GRUBBING	ACRE	1.3	\$14,500.00	\$18,850.00
2	UNCLASSIFIED EXCAVATION	CY	6000	\$16.00	\$96,000.00
3	TOPSOIL	CY	2100	\$19.60	\$41,160.00
4	EROSION LOG TYPE 1	LF	675	\$4.00	\$2,700.00
5	VEHICLE TRACKING PAD	EACH	1	\$3,500.00	\$3,500.00
6	SEEDING (NATIVE) (HYDRAULIC)	ACRE	1.3	\$5,000.00	\$6,500.00
7	AGGREGATE BASE COURSE (CLASS 6)	TON	430	\$40.00	\$17,200.00
8	HOT MIX ASPHALT (GRADING SX) (75) (PG 58-34)	TON	320	\$135.00	\$43,200.00
9	T-TOP PAVEMENT JOINT	EACH	1	\$2,000.00	\$2,000.00
10	PRECAST TYPE 13 INLET	EACH	3	\$6,000.00	\$18,000.00
11	PRECAST STORMWATER DRYWELL	EACH	4	\$9,000.00	\$36,000.00
12	12" HDPE STORM PIPE	LF	360	\$90.00	\$32,400.00
13	BURIED ELECTRIC LINE (XCEL CONTRACT)	LF	1000	\$156.00	\$156,000.00
14	SWITCH GEAR	EACH	1	PER XCEL CONTRACT	
15	ELECTRIC TRANSFORMER	EACH	2	PER XCEL CONTRACT	
16	PRECAST SANITARY SEWER MANHOLE	EACH	2	\$8,500.00	\$17,000.00
17	8" SEWER MAIN (PVC)	LF	200	\$250.00	\$50,000.00
18	GAS LINE (SIZE & MATERIAL TBD)	LF	300	PER XCEL CONTRACT	
				Total:	\$540,510.00

LOC Required (115% of Estimated Costs)	\$621,586.50
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