

**AGREEMENT  
FOR KIOWA CREEK MEADOWS**

APPROVAL OF THIS AGREEMENT CONSTITUTES A VESTED PROPERTY RIGHT  
PURSUANT TO ARTICLE 68 OF TITLE 24, C.R.S., AS AMENDED, AND CHAPTER 16,  
ARTICLE XII OF THE KIOWA MUNICIPAL CODE, AS AMENDED.

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of December 15, 2021 ("Agreement Date"), by and among James F. Digby, JeriLea G. Digby, Duncan R. Cornell, and Taylor C. Cornell, as tenants-in-common (collectively, "Owner"), CB KIOWA HOLDING COMPANY, LLC, a Colorado limited liability company (together with its successors and assigns pursuant to Section 15(c), "Developer"), and the TOWN OF KIOWA, a Colorado Home Rule Municipality (the "Town" and collectively with the Owner and Developer, the "Parties").

**Recitals**

A. Owner owns approximately 113.45 acres of real property located in the Town and commonly known as "Kiowa Creek Meadows," as described on Exhibit A, attached hereto (the "Property").

B. The Property is presently located within the Town's Planned Development ("PD") zoning district pursuant to Section 16-37 of the Kiowa Municipal Code ("KMC").

C. Owner intends to sell the Property to Developer, whereupon Developer proposes to develop the Property as a residential community with 450 housing units, featuring associated infrastructure, parks and open space, generally in accordance with the descriptions and depiction set forth in Exhibit B, attached hereto (the "Project").

D. KMC, Chapter 16, Article XII and the Colorado Vested Property Rights Statute, C.R.S. § 24-68-101 *et seq.* (the "Vested Rights Statute"), as the same were in effect as of the Agreement Date, each provide for the establishment of vested property rights in order to advance the intent and purposes set forth in Section 16-221 of the KMC and Section 101 of the Vested Rights Statute and authorize the Town to enter into development agreements with landowners providing for the vesting of property development rights for periods of greater than three (3) years.

E. The Parties acknowledge and agree that development of the Project in accordance with the terms and conditions of this Agreement will provide for orderly and well-planned growth, promote economic development and financial stability within the Town, ensure reasonable certainty, stability, and fairness in the land use planning process, secure the reasonable investment-backed expectations of the Developer, and foster cooperation between the public and private sectors in the area of land use planning.

F. In accordance with KMC Section 16-223, it is the intent of the Parties that this Agreement, including without limitation the description and depiction of the Project, constitutes a "Site Specific Development Plan," as such term is defined in Section 102(4)(a) of the Vested Rights Statute.

original application for approval of the Planned Development, irrespective of any subsequent change in the Town Regulations.

(b) Subdivision Plats. Prior to any application for building permits within any particular phase of the Project, Developer will submit, and the Town will process, in accordance with the Town Regulations in place at the time of the Agreement Date, such subdivision plats for such phase of the Project as may be required to subdivide the Property into individual lots consistent with the Project and the Planned Development.

(i) Subdivision Plat Amendments. The Town will process any subsequent plat amendments pertaining to lot layout, setbacks, or numbers of lots per filing, and will administratively approve any such amendments upon finding that: (i) the amendment is otherwise consistent with the Town Regulations in place as of the Agreement Date, the Planned Development, and any applicable future plats; (ii) the amendment would not increase the degree of any existing nonconformity or create any new nonconforming lot; and (iii) the approval will not adversely affect the public health, safety, and welfare of the Town.

(c) Model Homes. Notwithstanding anything in this Agreement to the contrary, the Town will not withhold building permits for model homes or sales or construction facilities, including without limitation temporary construction or sales trailers served by portalet, within the Property so long as Developer has provided (i) at least two points of all-weather emergency access to such phase of the Project, which may be gravel or aggregate base course, (ii) an adequate permanent or temporary water system with sufficient services for fire protection uses for such phase of the Project, and (iii) permanent or temporary water service to the lots on which such homes or facilities will be constructed. Without limiting the foregoing, all Improvements (as defined in Section 5) that serve a model home within the phase of the Project must be initially accepted by the Town, or Surety therefor must be posted in accordance with Section 5(d), prior to issuance of any certificates of occupancy for any such model home.

(d) Processing of Applications. The Developer has the right to submit and for the Town to process development applications for the Project without delay in accordance with the procedures set forth in the Town Regulations. The Town will use its best efforts to review all land use applications for the Project or any portion thereof in a timely fashion, taking into account available resources, overall development review demand, and pre-existing contractual commitments to third parties. In the context of each phase of the Project, the Town and Developer will cooperate in the establishment of reasonable timeframes for development review, including the circumstances under which accelerations or extensions of time may be achieved through retention of third-party services, the cost of which will be borne exclusively by the Developer.

5. Public Improvements. In addition to any public improvements required in connection with and in order to serve the Project (collectively, the "Improvements"), Developer will construct and install the following regional improvements:

of the Town that the District(s) has secured funding in place, adequate to cover the applicable Surety and warranty obligations for such Improvements; provided, however, that the District(s) issuance of bonds in the amount of the applicable Surety requirements for any Improvements to be completed by the District(s) shall be sufficient to demonstrate such adequate funding, as administratively approved by the Town. The District(s) will be under no obligation to post any Surety or additional financial guarantees, provided, however, that Developer may elect to satisfy the Surety and warranty obligations for Improvements constructed by the District(s) in its discretion, as administratively approved by the Town, such administrative approval not to be unreasonably withheld. Nothing in this Section 5(d)(iii) shall limit Developer's ability to assign all or any portion of this Agreement, including, without limitation, the warranty obligations pursuant to Section 15(c).

(e) Phasing. Developer will have the right to phase the development of the Project and construction of the Improvements at Developer's discretion, at such time as market conditions dictate, pursuant to a phasing plan to be submitted by Developer to the Town from time to time and processed administratively by the Town. Such phasing plan will include (i) the physical boundaries of such phase of the Project, which phases may be developed in non-sequential phases, and (ii) any Improvements to be included within such phase of the Project.

(f) Acquisitions. In connection with the development of the Project and the construction of the Improvements, Developer may be required to acquire additional real property, easements, rights-of-way and/or other property interests from adjacent property owners. The Town will support and assist Developer's acquisition of additional property interests, including through the use, if necessary, of its condemnation authority.

6. Special Districts and Associations.

(a) District Formation. The Parties acknowledge district financing mechanisms are necessary to support the development of the Project and associated Improvements. As such, it is an express condition of the Agreement that the Town will, concurrently with its approval of any preliminary subdivision plat and no later than its approval of any final plat, approve the formation of one or more metropolitan districts pursuant to and in accordance with the procedures set forth in Title 32 of the Colorado Revised Statutes (the "District(s)"), unless such condition is waived by Developer. Upon the Developer's request, the Parties will amend this Agreement to cause any new District(s) to become party(ies) to this Agreement.

(b) District Service Plan. Any prospective service plan for such District(s) will include the following provisions:

(i) District(s) will have the authority to finance, construct, install, operate and maintain public improvements, including district-owned properties, within the service area(s) of such District(s).

7. Taxes and Fees.

(a) Cap on Fees. Town agrees that any fees applicable to the Property or development of the Project, including, without limitation, any permit fees or impact fees, will not exceed the amounts established as of the Agreement Date, as set forth on Exhibit C, attached hereto and incorporated herein by this reference (the "Schedule of Fees"), plus any increase not to exceed the increase in the Consumer Price Index for the Denver-Aurora-Lakewood All Urban Consumers - All Items, plus one and one-half percent. In no event shall Developer be obligated to pay any fees or other charges in connection with the development of the Project in excess of those set forth in the Schedule of Fees, except as may be increased pursuant to this Section 7(a).

(b) Use Tax. Town agrees that, in the event of any increase in the Town's use tax as in effect as of the Agreement Date, the Town will rebate any amounts collected from any development of the Project attributable to such increase to the Developer, subject to any Town obligations or requirements under TABOR or any other provision of state law which may hereafter affected the Town's ability to provide such rebate.

8. Water and Sanitary Sewer. As a condition of Developer's rights and obligations hereunder, the Parties hereby acknowledge the Developer and the Kiowa Water and Wastewater Authority have entered into a separate New Well Development Agreement ("Water Agreement"), which Agreement addresses the water and wastewater provisions related to this Agreement. Upon execution of such Water Agreement, the Developer will provide a copy of the same to the Town and (i) such Water Agreement will be deemed a part of this Agreement and incorporated herein by this reference; and (ii) if at any time the Board of the Kiowa Water and Wastewater Authority has a vacancy due to the expiration of a term of an existing Board member, resignation of an existing Board member, or for any other reason, the Town will provide the Developer a reasonable opportunity to appoint an individual to such vacant position prior to selecting any other new Board member; provided, however, such obligation shall not be required if, at the time of such vacancy, at least one member of the Board of Kiowa Water and Wastewater Authority is a representative of Developer appointed pursuant to this Section 8; further provided, however, that such obligation shall remain in effect for the period commencing on the effective date of the Water Agreement and terminating upon the earlier to occur of (i) the issuance of certificate of occupancy for the last dwelling unit within the Project; (ii) termination of this Agreement; or (iii) Developer's written notice to the Town of its termination of such period.

9. Vested Property Rights.

(a) This Agreement constitutes an approved Site Specific Development Plan, as such term is defined in Section 102(4)(a) of the Vested Rights Statute, and creates vested property rights to develop the Project in the manner contemplated by this Agreement. Subsequent approvals required for or in connection with the development contemplated by the Site Specific Development Plan, including any amendments to the Site Specific Development Plan, if and when approved by the Town, will likewise be vested for the balance of the Term (as defined below).

the Agreement, in which case the terms and conditions of the Agreement will control.

10. No Obligation to Develop. This Agreement will not be construed to create an implied obligation upon the Developer or any other person to develop any or all of the Property to construct any public improvements. Neither the Developer nor any other person will have liability arising under this Agreement to the Town, or to any third party, for failure to develop all or any of the Property or all or any of the public improvements.

11. Default Provisions.

(a) Notice and Cure. Except as set forth in Section 11(b), if any party defaults under this Agreement, the non-defaulting party will deliver written notice to the defaulting party of such default, and the defaulting party will have 30 days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 30-day period and the defaulting party gives written notice to the non-defaulting party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure and provided further that in no event will such cure period exceed a total of six months. Notwithstanding the cure period set forth in this subsection, Developer will have the right to include a claim for breach of this Agreement in any action brought under C.R.C.P. Rule 106 if Developer believes that the failure to include such claim may jeopardize its ability to exercise its remedies with respect to this Agreement at a later date; provided, however, that Developer will dismiss such claim if the default is cured in accordance with this subsection.

(b) Remedies; Mutual Waiver of Damages Remedy. Any action by the Town or any successor governmental authority, or pursuant to an initiated measure, whether local or statewide, that alters, impairs, prevents, diminishes, imposes a moratorium on development, or otherwise delays the development or use of the Property in abridgment of the Vested Property Rights will entitle the Developer and/or the District (as applicable, the "Aggrieved Party") to an action for an injunction or specific performance and/or monetary damages as set forth in Section 105 of the Vested Rights Statute. Notwithstanding the foregoing, and in consideration of the Town's policy of avoiding monetary liability in all circumstances, and the Developer's desire to complete construction of the Project at the time and in the manner provided by this Agreement, (a) the Developer hereby waives, on behalf of itself and its successors and assigns in interest, the right to seek and be paid "just compensation" pursuant to Section 105(1)(c) of the Vested Rights Statute; and (b) the Town hereby waives, on behalf of itself and its successors and assigns in interest, the right to pay "just compensation" pursuant to Section 105(1)(c) of the Vested Rights Statute. The Aggrieved Party agrees to first pursue an injunction or specific performance, and if granted, will have no right to pursue monetary damages or any other remedy set forth in Section 105(1)(c) of the Vested Rights Statute; and only if a court denies an injunction or specific performance will the Aggrieved Party be entitled to pursue damages. Nothing in

(c) any Affiliate of Developer. Following any such assignment of this Agreement by Developer, and delivery to the Town of written evidence of such assignment and assumption by such assignee, Developer will be relieved of any obligations and liabilities so assigned, and the Town will accept performance of the obligations set forth in this Agreement by any party so assigned such obligations in accordance with this Section. For the avoidance of doubt, in the event of Developer's assignment of this Agreement b, Developer's successors and assigns shall be bound by the Surety obligations set forth in Section 5(d) of this Agreement.

(d) Counterparts. This Agreement may be executed in counterparts, all such counterparts will constitute the same agreement and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart.

(e) Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes any prior oral or collateral agreements or understandings, and may be amended only in writing, approved in substantially the same manner as the Agreement itself.

(f) Notices. Any notice required or permitted by this Agreement will be in writing and will be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing to the other Parties. Such notice will be deemed to have been given when deposited in the U.S. Mail.

If to the Town: Town of Kiowa  
404 Comanche Street  
PO Box 237  
Kiowa, Colorado 80117  
Attention: Town Manager

With a copy to: Robert Tibbals  
P.O. Box 3112  
Englewood, Colorado 80155

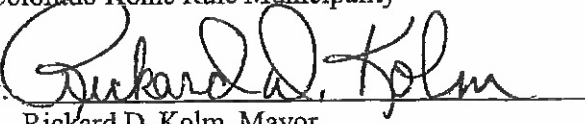
If to Owner: James F. Digby, JeriLea G. Digby, Duncan R.  
Cornell, and Taylor C. Cornell  
c/o Jim Digby  
23333 County Road 117  
Simla, Colorado 80835

If to Developer: CB KIOWA HOLDING COMPANY, LLC  
1288 South Clayton Street  
Denver, Colorado 80210  
Attention: Jeff Keeley

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

**TOWN:**

TOWN OF KIOWA,  
a Colorado Home Rule Municipality

By:   
Rickard D. Kolm, Mayor

ATTEST:

  
Tasha Chevanna, Town Clerk

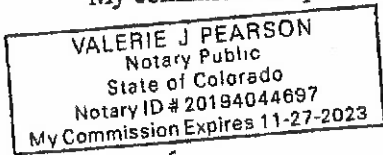
Date: 11-22-2021

STATE OF Colorado )  
COUNTY OF Elbert ) ss.

The foregoing instrument was acknowledged before me this 9 day of December, 2021, by JeriLea G. Digby, an individual.

Witness my hand and official seal.

My commission expires: 11/27/23



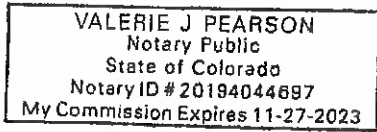
Valerie J Pearson  
Notary Public

STATE OF Colorado )  
COUNTY OF Elbert ) ss.

The foregoing instrument was acknowledged before me this 10 day of December, 2021, by Duncan R. Cornell, an individual.

Witness my hand and official seal.

My commission expires: 11/27/23



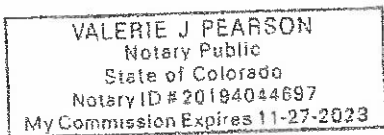
Valerie J Pearson  
Notary Public

STATE OF Colorado )  
COUNTY OF Elbert ) ss.

The foregoing instrument was acknowledged before me this 9 day of December, 2021, by Taylor C. Cornell, an individual.

Witness my hand and official seal.

My commission expires: 11/27/23



Valerie J Pearson  
Notary Public



**EXHIBIT A**  
**Legal Description of the Property**

**PARCEL A:**

A PARCEL OF PROPERTY LOCATED IN SECTION 20, TOWNSHIP 8 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ELBERT COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 20 AND CONSIDERING THE EAST LINE OF SAID SECTION 20 TO BEAR SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF 2479.01 FEET;  
THENCE SOUTH 89 DEGREES 50 MINUTES 38 SECONDS WEST, A DISTANCE OF 649.98 FEET TO A POINT OF BEGINNING;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 672.55 FEET;  
THENCE SOUTH 89 DEGREES 45 MINUTES 27 SECONDS WEST, A DISTANCE OF 200.00 FEET;  
THENCE NORTH 00 DEGREES 14 MINUTES 33 SECONDS WEST, A DISTANCE OF 100.00 FEET;  
THENCE SOUTH 89 DEGREES 45 MINUTES 27 SECONDS WEST, A DISTANCE OF 265.01 FEET TO A POINT OF CURVE;  
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 78.54 FEET;  
THENCE NORTH 00 DEGREES 14 MINUTES 33 SECONDS WEST, A DISTANCE OF 63.32 FEET;  
THENCE SOUTH 89 DEGREES 50 MINUTES 38 SECONDS WEST, A DISTANCE OF 115.00 FEET;  
THENCE NORTH 00 DEGREES 14 MINUTES 33 SECONDS WEST, A DISTANCE OF 180.00 FEET;  
THENCE SOUTH 89 DEGREES 05 MINUTES 38 SECONDS WEST, A DISTANCE OF 494.74 FEET;  
THENCE NORTH 00 DEGREES 09 MINUTES 22 SECONDS WEST, A DISTANCE OF 280.00 FEET;  
THENCE NORTH 89 DEGREES 50 MINUTES 38 SECONDS EAST, A DISTANCE OF 1124.33 FEET TO THE POINT OF BEGINNING,  
COUNTY OF ELBERT, STATE OF COLORADO.

**PARCEL B:**

A PARCEL OF PROPERTY LOCATED IN SECTION 20, TOWNSHIP 8 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ELBERT COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 20 AND CONSIDERING THE EAST LINE OF SAID SECTION 20 TO BEAR SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 3619.92 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUING SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 725.57 FEET;  
THENCE SOUTH 89 DEGREES 56 MINUTES 02 SECONDS WEST, A DISTANCE OF 2542.24 FEET;  
THENCE NORTH 00 DEGREES 21 MINUTES 08 SECONDS WEST, A DISTANCE OF 1198.44 FEET;  
THENCE NORTH 89 DEGREES 38 MINUTES 52 SECONDS EAST, A DISTANCE OF 126.44 FEET TO A POINT OF CURVE;  
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 05 DEGREES 09 MINUTES 37 SECONDS, AN ARC LENGTH OF 29.27

**EXHIBIT B**

**Description and Depiction of the Project**

The Planned Development will allow for a minimum of 450 housing units, which units will consist of the following: (i) approximately 349 single family detached units located on approximately 46.04 acres; and (ii) approximately 88 single family attached units or multi-family units located on approximately 5.91 acres.

The Planned Development will provide for retail and service commercial land uses. Such general commercial uses will make up approximately 2.21 acres of the Project.

The conceptual land plan depicted below is preliminary in nature and generally depicts the uses, densities, and planning areas that will be reflected in the eventual Planned Development.

**EXHIBIT C**  
**Fee Schedule**

<b>Town of Kiowa Fee Schedule</b>		
<b>*Estimated Valuation of a 1,500 Single Family Home</b>		<b>\$136,317</b>
Bldg Permit	**See Calculation Steps in Breakdown Table	\$1,197
Plan Review Fee		\$778
Use Tax (1.5% of Valuation)		\$1,022
Streets		\$752
Parks & Rec		\$356
Police		\$791
Public Facilities		\$1,250
<b>Town of Kiowa Total Fee</b>		<b>\$6,147</b>

\*Please note that the valuation will change based off the total square footage of the single family home and garage.

\*\*Builders shall use the below valuation table for their base valuation adjusted by CPI.

## WELL DEVELOPMENT AGREEMENT

THIS WELL DEVELOPMENT AGREEMENT (this "Agreement") is made as of December 15, 2021 ("Agreement Date"), by and among James F. Digby, JeriLea G. Digby, Duncan R. Cornell, and Taylor C. Cornell, as tenants-in-common (collectively, "Owner"), CB KIOWA HOLDING COMPANY, LLC, a Colorado limited liability company (together with its successors and assigns pursuant to Section 9(c), "Developer"), and the KIOWA WATER AND WASTEWATER AUTHORITY, a political subdivision of the State of Colorado (the "Water Authority").

### Recitals

A. Owner owns approximately 113.45 acres of real property located in the Town of Kiowa, a Colorado statutory municipality (the "Town") and commonly known as "Kiowa Creek Meadows," as described on Exhibit A attached hereto (the "Property").

B. Owner intends to sell the Property to Developer, whereupon Developer proposes to develop the Property as a residential community with approximately 450 housing units, together with additional commercial area and associated infrastructure, parks and open space, generally in accordance with the descriptions and depiction set forth in Exhibit B attached hereto (the "Project").

C. In connection with the Project, the Parties acknowledge that the Developer and the Town, intend to enter into a development agreement providing for, among other things, the establishment of vested development rights with respect to the Project, on terms acceptable to the Developer and the Town (the "Vested Rights Agreement"), in addition to the formation of one or more metropolitan districts pursuant to and in accordance with the procedures set forth in Title 32 of the Colorado Revised Statutes (the "District(s)").

D. It is the desire of the Parties to enter into this Agreement to set forth the terms and conditions upon which the District(s) will participate in the construction of a new water well to service the Project and additional developments within the Water Authority's boundaries, as described in Exhibit C (the "New Well"), the intent being that such terms and conditions will be incorporated into the Vested Rights Agreement.

### Agreement

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. Effectiveness. Notwithstanding anything to the contrary in this Agreement, if Developer, or any affiliate of Developer identified by Developer in written notice to the Water Authority (an "Affiliate"), has not acquired the Property, as evidenced by written notice of the same delivered to the Water Authority by Developer or, as applicable, as of December 31, 2025, this Agreement will automatically terminate. Upon such conveyance and without the need for any additional action by any party, Owner will be released of any and all rights and obligations hereunder.

2. Street Crossing. The Water Authority will allow one low-water street crossing within the Project, so long as Developer has obtained the necessary state or federal permits for the same.

3. New Well Design. Developer will contribute up to \$3,500 to reimburse the Water Authority for its actual, out-of-pocket costs of obtaining necessary permits for the New Well, within 30 days following delivery by the Water Authority of its invoices and other appropriate documentation, subject to Developer's reasonable approval, of the same.

4. New Well Agreement. Prior to obtaining the tenth building permit within the first phase of the Project that will be serviced by such New Well, Developer will use good faith efforts to cause one or more of the District(s) to enter into a separate agreement with the Water Authority and Developer for the purpose of constructing the New Well, in the form attached hereto as Exhibit D ("New Well Agreement"). The Water Authority will execute the New Well Agreement within 30 days of receipt of Developer's or any District(s) request therefor.

5. District Board. The Parties acknowledge that the Vested Rights Agreement includes provisions permitting the Town to appoint a representative of Developer to the board of the Water Authority, from time to time. The Water Authority will cooperate in good faith with such appointments and shall not unreasonably interfere with or delay the effectiveness of such appointments.

6. Vested Rights Agreement. The Water Authority will reasonably cooperate with the Developer in connection with the approval of the Vested Rights Agreement, including without limitation executing such consents as may be reasonably required in connection therewith, at no cost or expense to the Water Authority.

7. No Obligation to Develop. This Agreement will not be construed to create an implied obligation upon the Developer or any other person to develop any or all of the Property to construct any public improvements. If development does not occur, neither the Developer nor any other person will have liability arising under this Agreement to the Water Authority, or to any third party, for failure to develop all or any of the Property or all or any of the public improvements, including without limitation the New Well. In the event the District(s) are not organized, or have not entered into the New Well Agreement on or before December 31, 2031, then, so long as such failure is not due to the Water Authority's delay, this Agreement and the parties' rights and obligations under the Agreement will automatically terminate.

8. Default Provisions.

(a) Notice and Cure. If any party defaults under this Agreement, the non-defaulting party will deliver written notice to the defaulting party of such default, and the defaulting party will have 30 days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 30-day period and the defaulting party gives written notice to the non-defaulting party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting party is at all times within such

additional time period actively and diligently pursuing such cure and provided further that in no event will such cure period exceed a total of six months. Notwithstanding the cure period set forth in this subsection, Developer will have the right to include a claim for breach of this Agreement in any action brought under C.R.C.P. Rule 106 if Developer believes that the failure to include such claim may jeopardize its ability to exercise its remedies with respect to this Agreement at a later date; provided, however, that Developer will dismiss such claim if the default is cured in accordance with this subsection.

(b) Attorneys' Fees. If any party commences any action or proceeding against the other in order to enforce the provisions of this Agreement, the prevailing party in any such action shall be awarded, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including all reasonable attorneys' fees and expenses.

9. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Water Authority not performed during the current fiscal year is subject to annual appropriation, will extend only to monies currently appropriated, and will not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

10. Miscellaneous Provisions.

(a) Recording. This Agreement will be recorded in the real property records of Elbert County, Colorado.

(b) Amendments. This Agreement may be amended or modified only by written instrument executed by the Water Authority and the owner of the portion of the Property to which the amendment relates; provided, however, that so long as Developer owns any portion of the Property, any amendments to this Agreement will require the written consent of the Developer.

(c) Successors and Assigns; Binding Effect. Where used in this Agreement, the term "Developer" will also mean any of the lawful successors or assigns of Developer, and all such lawful successors and assigns will be bound by and have the right to enforce this Agreement; provided, however, that in no event will the purchaser of any lot upon which a dwelling has been constructed be deemed to be a successor to Developer hereunder. Notwithstanding the foregoing, Developer may, in its sole and absolute discretion and without the Water Authority's consent, assign its rights and obligations under this Agreement, in whole or in part, to any Affiliate of Developer. Following any such assignment of this Agreement by Developer, and delivery to the Water Authority of written evidence of such assignment and assumption by such assignee, Developer will be relieved of any obligations and liabilities so assigned, and the Water Authority will accept performance of the obligations set forth in this Agreement by any party so assigned such obligations in accordance with this Section.

(d) Counterparts. This Agreement may be executed in counterparts, all such counterparts will constitute the same agreement and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart.

(e) Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes any prior oral or collateral agreements or understandings, and may be amended only in writing, approved in substantially the same manner as the Agreement itself.

(f) Notices. Any notice required or permitted by this Agreement will be in writing and will be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other Parties. Such notice will be deemed to have been given when deposited in the U.S. Mail.

If to Owner: James F. Digby, JeriLea G. Digby, Duncan R.  
Cornell, and Taylor C. Cornell  
c/o Jim Digby  
23333 County Road 117  
Simla, Colorado 80835

If to Developer: CB KIOWA HOLDING COMPANY, LLC  
1288 South Clayton Street  
Denver, Colorado 80210  
Attention: Jeff Keeley

With a copy to: Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 Seventeenth Street, Suite 1600  
Denver, Colorado 80202  
Attention: Brian J. Connolly

If to the Water Authority: KIOWA WATER & WASTEWATER AUTHORITY (KWNA)  
404 COMANCHE STREET  
PO BOX 237 KIOWA, CO 80117  
Attention: Debbie Ullom

With a copy to: White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, Colorado 80122  
P 303.858.1800  
Attention: George M. Rowley

(g) Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will, unless amended or modified by mutual consent of the Parties, continue in full force and effect.

(h) Relationship to Water Authority Regulations. This Agreement will govern development of the Property as it related to the New Well and is adopted pursuant to the appropriate procedures of the Water Authority. In the event of an express or implied conflict between the terms and conditions of the Water Authority's adopted regulations and the terms and conditions set forth in this Agreement, this Agreement will control.

(i) Waiver of Breach. The waiver by any of the Parties of a breach of any term or provision of this Agreement will not operate or be construed as a waiver of any subsequent breach by any other Parties.

(j) No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the Parties, and nothing contained in this Agreement will give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under this Agreement will be deemed to be an incidental beneficiary only.

(k) Governing Law, Venue. This Agreement will be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement will lie with any appropriate court within Elbert County, Colorado.

(l) Authorization of Parties' Representative. The undersigned hereby represent that they serve as representatives of the entity for which they have executed this Agreement and are fully authorized to execute this Agreement on behalf of such entity.


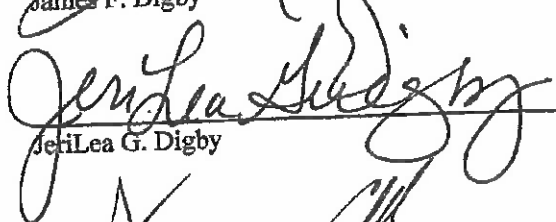
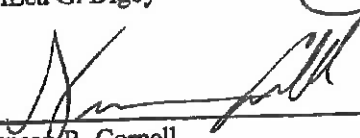

(m) Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Water Authority, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Water Authority and, in particular, governmental immunity afforded or available to the Water Authority pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

*[Remainder of page intentionally left blank]*



IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

OWNER:


  
James F. Digby  
  
JeriLea G. Digby  
  
Duncan R. Cornell  
  
Taylor C. Cornell

STATE OF Colorado )  
COUNTY OF Elbert ) ss.

The foregoing instrument was acknowledged before me this 9 day of December, 2021, by James F. Digby, an individual.

Witness my hand and official seal.

My commission expires: 11/27/23

  
Notary Public

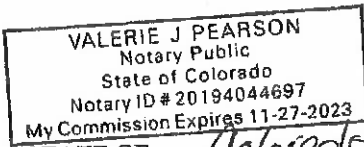
VALERIE J PEARSON  
Notary Public  
State of Colorado  
Notary ID # 20194044687  
My Commission Expires 11-27-2023

STATE OF Colorado )  
COUNTY OF Elbert ) ss.

The foregoing instrument was acknowledged before me this 9 day of December,  
2021, by JeriLea G. Digby, an individual.

Witness my hand and official seal.

My commission expires: 11/27/23



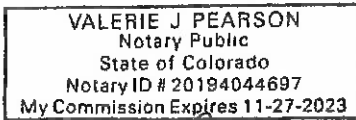
Valerie J. Pearson  
Notary Public

STATE OF Colorado )  
COUNTY OF Elbert ) ss.

The foregoing instrument was acknowledged before me this 10 day of December,  
2021, by Duncan R. Cornell, an individual.

Witness my hand and official seal.

My commission expires: 11/27/23



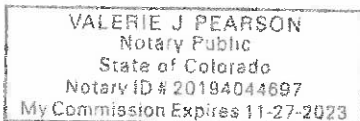
Valerie J. Pearson  
Notary Public

STATE OF Colorado )  
COUNTY OF Elbert ) ss.

The foregoing instrument was acknowledged before me this 9 day of December,  
2021, by Taylor C. Cornell, an individual.

Witness my hand and official seal.

My commission expires: 11/27/23

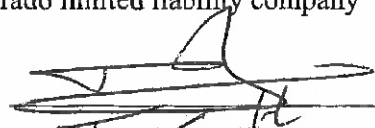


Valerie J. Pearson  
Notary Public

Signature Page to Well Development Agreement

**DEVELOPER:**

CB KIOWA HOLDING COMPANY, LLC,  
a Colorado limited liability company

By:   
Name: Tim Craft  
Title: Manager

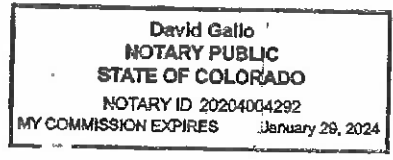
STATE OF Colorado )  
  ) ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 30 day of November,  
2021, by Tim Craft as Manager of CB KIOWA HOLDING  
COMPANY, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 1/29/2024

David Gallo  
Notary Public



**WATER AUTHORITY:**

KIOWA WATER AND WASTEWATER  
AUTHORITY, a political subdivision of the State  
of Colorado

By: Debbie Ullom  
Name: Debbie Ullom  
Title: KIOWA President

STATE OF Colorado )  
  ) ss.  
COUNTY OF Elbert )

The foregoing instrument was acknowledged before me this 22nd day of November, 2021, by Debbie Ullom as President of KIOWA WATER AND WASTEWATER AUTHORITY, a political subdivision of the State of Colorado.

Witness my hand and official seal.

My commission expires: September 22, 2025

Tasha Chevarria  
Notary Public

TASHA CHEVARRIA  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20214037597  
COMMISSION EXPIRES  
SEPTEMBER 22, 2025

**Exhibit A**  
**Legal Description of the Property**

**PARCEL A:**

A PARCEL OF PROPERTY LOCATED IN SECTION 20, TOWNSHIP 8 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ELBERT COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 20 AND CONSIDERING THE EAST LINE OF SAID SECTION 20 TO BEAR SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF 2479.01 FEET;

THENCE SOUTH 89 DEGREES 50 MINUTES 38 SECONDS WEST, A DISTANCE OF 649.98 FEET TO A POINT OF BEGINNING;

THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 672.55 FEET;

THENCE SOUTH 89 DEGREES 45 MINUTES 27 SECONDS WEST, A DISTANCE OF 200.00 FEET;

THENCE NORTH 00 DEGREES 14 MINUTES 33 SECONDS WEST, A DISTANCE OF 100.00 FEET;

THENCE SOUTH 89 DEGREES 45 MINUTES 27 SECONDS WEST, A DISTANCE OF 265.01 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 78.54 FEET;

THENCE NORTH 00 DEGREES 14 MINUTES 33 SECONDS WEST, A DISTANCE OF 63.32 FEET;

THENCE SOUTH 89 DEGREES 50 MINUTES 38 SECONDS WEST, A DISTANCE OF 115.00 FEET;

THENCE NORTH 00 DEGREES 14 MINUTES 33 SECONDS WEST, A DISTANCE OF 180.00 FEET;

THENCE SOUTH 89 DEGREES 05 MINUTES 38 SECONDS WEST, A DISTANCE OF 494.74 FEET;

THENCE NORTH 00 DEGREES 09 MINUTES 22 SECONDS WEST, A DISTANCE OF 280.00 FEET;

THENCE NORTH 89 DEGREES 50 MINUTES 38 SECONDS EAST, A DISTANCE OF 1124.33 FEET TO THE POINT OF BEGINNING,

COUNTY OF ELBERT, STATE OF COLORADO.

**PARCEL B:**

A PARCEL OF PROPERTY LOCATED IN SECTION 20, TOWNSHIP 8 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ELBERT COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 20 AND CONSIDERING THE EAST LINE OF SAID SECTION 20 TO BEAR SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 3619.92 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 725.57 FEET;

THENCE SOUTH 89 DEGREES 56 MINUTES 02 SECONDS WEST, A DISTANCE OF 2542.24 FEET;

THENCE NORTH 00 DEGREES 21 MINUTES 08 SECONDS WEST, A DISTANCE OF 1198.44 FEET;

THENCE NORTH 89 DEGREES 38 MINUTES 52 SECONDS EAST, A DISTANCE OF 126.44 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 05 DEGREES 09 MINUTES 37 SECONDS, AN ARC LENGTH OF 29.27

FEET AND WHOSE CHORD BEARS NORTH 07 DEGREES 37 MINUTES 28 SECONDS EAST, A DISTANCE OF 29.26 FEET;  
THENCE NORTH 10 DEGREES 12 MINUTES 16 SECONDS EAST, A DISTANCE OF 620.41 FEET;  
THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 333.13 FEET;  
THENCE NORTH 24 DEGREES 23 MINUTES 16 SECONDS WEST, A DISTANCE OF 214.14 FEET;  
THENCE NORTH 70 DEGREES 24 MINUTES 57 SECONDS EAST, A DISTANCE OF 1004.69 FEET;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 506.02 FEET;  
THENCE SOUTH 00 DEGREES 09 MINUTES 22 SECONDS EAST, A DISTANCE OF 280.00 FEET;  
THENCE NORTH 89 DEGREES 50 MINUTES 38 SECONDS EAST, A DISTANCE OF 494.74 FEET;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 180.00 FEET;  
THENCE NORTH 89 DEGREES 50 MINUTES 38 SECONDS EAST, A DISTANCE OF 115.00 FEET;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 63.32 FEET TO A POINT OF CURVE;  
THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, AND AN ARC LENGTH OF 78.54 FEET;  
THENCE NORTH 89 DEGREES 45 MINUTES 27 SECONDS EAST, A DISTANCE OF 265.01 FEET;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 100.00 FEET;  
THENCE NORTH 89 DEGREES 45 MINUTES 27 SECONDS EAST, A DISTANCE OF 200.00 FEET;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 469.34 FEET;  
THENCE NORTH 89 DEGREES 45 MINUTES 27 SECONDS EAST, A DISTANCE OF 649.98 FEET TO THE POINT OF BEGINNING,  
COUNTY OF ELBERT, STATE OF COLORADO.

**PARCEL C:**

A PARCEL OF PROPERTY LOCATED IN SECTION 20, TOWNSHIP 8 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ELBERT COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 20 AND CONSIDERING THE EAST LINE OF SAID SECTION 20 TO BEAR S00°14'33"E WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;  
THENCE S00°14'33"E, ALONG SAID EAST LINE, A DISTANCE OF 2479.01 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUING S00°14'33"E, A DISTANCE OF 1,140.92 FEET;  
THENCE S89°45'27"W, A DISTANCE OF 649.98 FEET; THENCE N00°14'33"W, A DISTANCE OF 1,141.90 FEET TO A POINT ON THE SOUTH LINE OF FAWN VALLEY SUBDIVISION;  
THENCE N89°50'38"E, ALONG SAID SOUTH LINE, A DISTANCE OF 649.98 FEET TO THE POINT OF BEGINNING,  
COUNTY OF ELBERT, STATE OF COLORADO

**Exhibit B**  
**The Project**

The Planned Development will allow for a minimum of 450 housing units, which units will consist of the following: (i) approximately 349 single family detached units located on approximately 46.04 acres; and (ii) approximately 88 single family attached units or multi-family units located on approximately 5.91 acres.

The Planned Development will provide for retail and service commercial land uses. Such general commercial uses will make up approximately 2.21 acres of the Project.

The conceptual land plan depicted below is preliminary in nature and generally depicts the uses, densities, and planning areas that will be reflected in the eventual Planned Development.

**Land Use Chart**

Symbol	Description	Code
1	Single-Family Detached	1
2	Single-Family Attached	2
3	Multi-Family	3
4	Commercial	4
5	Industrial	5
6	Public Use	6
7	Open Space	7
8	Utility	8
9	Other	9

Symbol	Description	Code
10	Single-Family Detached	10
11	Single-Family Attached	11
12	Multi-Family	12
13	Commercial	13
14	Industrial	14
15	Public Use	15
16	Open Space	16
17	Utility	17
18	Other	18

Symbol	Description	Code
19	Single-Family Detached	19
20	Single-Family Attached	20
21	Multi-Family	21
22	Commercial	22
23	Industrial	23
24	Public Use	24
25	Open Space	25
26	Utility	26
27	Other	27



WAMBOLDT - Kiowa, Colorado  
 CONCEPT PLAN 1.0



B-2



**Exhibit C**  
**New Well**

A new groundwater well is needed to provide some level of system redundancy and to provide adequate water supply during the maximum day demand conditions for the Town and the new development.

The new nontributary Arapahoe Aquifer groundwater well can be drilled at any location within the Town boundaries. The well site should be at least 250 feet by 250 feet to allow room for the drilling equipment and for future access to maintain the well pump and equipment. Sufficient electrical power to the site is required for the pump motor and appurtenances.

Kiowa Water & Wastewater Authority has determined the parcel that currently contains the existing alluvial well, booster pump station, and 100,000 gallon storage tank may be an appropriate location for the new well. This site is satisfactory given its proximity to the other system components including the booster pump station, chlorine injection system, storage tank, and easy access for construction and maintenance.

**Exhibit D**  
**New Well Agreement**

**NEW WELL DEVELOPMENT AGREEMENT**

THIS NEW WELL DEVELOPMENT AGREEMENT (this "Agreement") is made as of \_\_\_\_\_ ("Agreement Date"), by and between [\_\_\_\_\_] ("District"), and the KIOWA WATER AND WASTEWATER AUTHORITY, a political subdivision of the State of Colorado (the "Water Authority").

**Recitals**

A. In connection with the contemplated development of approximately 113.45 acres of real property located in the Town of Kiowa, a Colorado statutory municipality (the "Town") and commonly known as "Kiowa Creek Meadows," as described on Exhibit A attached hereto (the "Property"), the Water Authority entered into that certain Well Development Agreement dated \_\_\_\_\_, and recorded in the real property records of Elbert County, Colorado, at Reception No. \_\_\_\_\_, by and among the Water Authority, CB Kiowa Holding Company, LLC, a Colorado limited liability company (the "Developer"), and the then-current owner of the Property (the "Original Agreement").

B. Among other things, the Original Agreement contemplated the formation of the District pursuant to and in accordance with the procedures set forth in Title 32 of the Colorado Revised Statutes, and that, following formation of such District, the Water Authority and such District would enter into this Agreement to set forth the terms and conditions upon which the District will participate in the construction of a new water well to service the Project and additional developments within the Water Authority's boundaries, as described in Exhibit B (the "New Well").

**Agreement**

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in the Original Agreement and herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Capacity of New Well. The Water Authority represents and warrants that the New Well will have capacity necessary and appropriate to serve approximately 450 housing units, together with additional commercial area and associated infrastructure, parks and open space within the Property (the "Project"), and that the Water Authority will not commit to serve any other development that would cause the capacity of the New Well to be insufficient to serve the Project.

2. New Well.

(a) Construction. District will publically bid and construct, at its sole cost and expense, the New Well. District will warrant that the New Well will be installed in a good and workmanlike manner and in substantial compliance with the construction plans approved by the Water Authority for a period commencing upon the initial acceptance of

such New Well and continuing for one year following such date of initial acceptance. The Water Authority will have the right to approve the scope of work prior to bidding and contractor that will construct the New Well, which approval shall not be unreasonably withheld and will be deemed granted if the Water Authority does not respond to any request for approval within 10 business days of such request; provided, however, that the Water Authority will be deemed to have approved the scope of work set forth on Exhibit C attached hereto (the "Estimated Scope") so long as there are no material or adverse changes to such Estimated Scope prior to the date of commencement.

(b) Financing. District will be under no obligation to post any surety or additional financial guarantees with respect to the New Well so long as District has secured funding in place adequate to cover the estimated cost of the New Well, as set forth in the Estimated Scope ("Estimated Cost"); provided, however, that the District issuance of bonds in the amount of the Estimated Cost of the New Well shall be sufficient to demonstrate such adequate funding, if bond proceeds in the amount of the Estimated Cost of the New Well are set aside in a separate escrow account to be used only for construction of the New Well. The form of the escrow agreement and the escrow agent will be subject to the reasonable approval of the Water Authority and the District. If bonds have not been issued, the District will cause evidence of such funding to be provided, in an amount equal to the Estimated Cost and in form reasonably acceptable to the Water Authority, prior to commencing construction of the New Well, or, if District elect not to provide such evidence, District may terminate this Agreement by written notice to the Authority. Subject to Section 4, in the event the District defaults under this Agreement on its obligations to construct the New Well, and fails to cure such default within the cure period set forth in Section 5(a), the Water Authority will be granted access to the escrowed funds to finish the construction of the New Well in accordance with the terms of the agreed-upon escrow agreement.

(c) Reimbursement of New Well Costs. District costs and expenses actually incurred in constructing the New Well, including without limitation overhead expenses and other costs incurred in connection with issuance of bonds are collectively, referred to herein as "New Well Costs." Upon collection of any Water Tap Fees for the Project or for any other development that will be served by the New Well, the Water Authority will promptly remit the same to the District until the District has been fully reimbursed for the New Well Costs, as evidenced by District invoices and other appropriate documentation of the same. Prior to initial acceptance of the New Well by the Water Authority, or the remittance of any Water Tap Fees, the District will provide the following:

- (i) A complete set of digital record drawings of the Public Infrastructure which are certified by a professional engineer registered in the State of Colorado or a licensed land surveyor, showing accurate dimensions and location of all Public Improvements. Such drawings shall be in form and content reasonably acceptable to the District;
- (ii) Evidence that any underground facilities are electronically locatable (if applicable);

- (iii) Test results for improvements conforming to industry standards;
- (iv) Assignment of any warranties or guaranties (if applicable);
- (v) Any operation and maintenance manuals;
- (vi) An executed Bill of Sale conveying the New Well to the Water Authority;
- (vii) If the District is to assume ownership of any real property, a Special Warranty Deed, in the form of CRS § 38-30-113(b), conveying the real property to the District; and
- (viii) A certificate from an engineer licensed in the State of Colorado stating that the New Well has been constructed in substantial compliance with plans approved by the Water Authority and that the costs incurred in the construction are reasonable and comparable to costs for similar projects in the Denver metropolitan area.

3. Tap Fees and other Charges.

(a) Water and Sewer Tap Fees. The Water Authority will cap the Water Tap Fee for lots within the Project as follows, all of which are identified costs located in the latest adopted Fee Schedule of the Water Authority: (i) for each lot designated for a single family detached residence within the Project, a Water Tap Fee at \$6,500 and the Sewer Tap Fee at \$6,500; and (ii) for each lot designated for a single family attached residence within the Project, a Water Tap Fee at \$3,750 and the Sewer Tap Fee at \$3,750. If the Water Authority reduces such fees at any point during the development of the Project, the amount of such reduced fee will apply for subsequent development of the Project.

(b) Other Fees. In no event will any increased or additional Water Authority fees be applicable to the development of the Project or the Property, nor will the Water Authority increase any existing fees applicable to the Project or the Property, except for increases in usage rates supported by a rate study and applied equally to all users within the Water Authority.

(c) CPI Increases. If the Project has not been at least 50% developed (as evidenced by the issuance of building permits for at least 225 housing units) by December 31, 2031, then the Water Tap Fees and Sewer Tap Fees, respectively, set forth in Section 3(a) of this Agreement may be increased on an annual basis commencing on December 31, 2031, as set forth in written notice to the District from the Water Authority setting forth the amount of such increase, delivered prior to such date. Such increase shall not exceed, on an annual basis, the amount obtained by multiplying the amount of the Water Tap Fees and Sewer Tap Fees, respectively, for the prior calendar year by the corresponding increase in the Consumer Price Index for Denver-Aurora-Lakewood All Urban Consumers – All Items, published by the Bureau of Labor Statistics of the United States Department of Labor, for such calendar year.

4. No Obligation to Develop. This Agreement will not be construed to create an implied obligation to develop any or all of the Property or to construct any public improvements. If development does not occur, neither the District nor any other person will have liability arising under this Agreement to the Water Authority, or to any third party, for failure to develop all or any of the Property or all or any of the public improvements, including without limitation the New Well.

5. Default Provisions.

(a) Notice and Cure. If any party defaults under this Agreement, the non-defaulting party will deliver written notice to the defaulting party of such default, and the defaulting party will have 30 days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 30-day period and the defaulting party gives written notice to the non-defaulting party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure and provided further that in no event will such cure period exceed a total of six months. Notwithstanding the cure period set forth in this subsection, Developer and/or District will have the right to include a claim for breach of this Agreement in any action brought under C.R.C.P. Rule 106 if Developer and/or District believes that the failure to include such claim may jeopardize its ability to exercise its remedies with respect to this Agreement at a later date; provided, however, that Developer and/or District, as applicable, will dismiss such claim if the default is cured in accordance with this subsection.

(b) Attorneys' Fees. If any party commences any action or proceeding against the other in order to enforce the provisions of this Agreement, the prevailing party in any such action shall be awarded, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including all reasonable attorneys' fees and expenses.

6. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Water Authority not performed during the current fiscal year is subject to annual appropriation, will extend only to monies currently appropriated, and will not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

7. Miscellaneous Provisions.

(a) Recording. This Agreement will be recorded in the real property records of Elbert County, Colorado.

(b) Amendments; Third Party Beneficiary. This Agreement may be amended or modified only by written instrument executed by the Water Authority and the District; provided, however, that so long as Developer owns any portion of the Property, any

amendments to this Agreement will require the written consent of the Developer, which is expressly made a third party beneficiary of this Agreement.

(c) Successors and Assigns; Binding Effect. Where used in this Agreement, the term "District" will also mean any of the lawful successors or assigns of District, and all such lawful successors and assigns will be bound by and have the right to enforce this Agreement; provided, however, that in no event will the purchaser of any lot upon which a dwelling has been constructed be deemed to be a successor to District hereunder. Notwithstanding the foregoing, District may, in its sole and absolute discretion and without the Water Authority's consent, assign its rights and obligations under this Agreement, in whole or in part, to Developer or any Affiliate of Developer. Following any such assignment of this Agreement by the District, and delivery to the Water Authority of written evidence of such assignment and assumption by such assignee, the District will be relieved of any obligations and liabilities so assigned, and the Water Authority will accept performance of the obligations set forth in this Agreement by any party so assigned such obligations in accordance with this Section.

(d) Counterparts. This Agreement may be executed in counterparts, all such counterparts will constitute the same agreement and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart.

(e) Entire Agreement. Excepting the Original Agreement, this Agreement constitutes the entire agreement of the parties and supersedes any prior oral or collateral agreements or understandings, and may be amended only in writing, approved in substantially the same manner as the Agreement itself.

(f) Notices. Any notice required or permitted by this Agreement will be in writing and will be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other parties. Such notice will be deemed to have been given when deposited in the U.S. Mail.

If to District:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

If to the Water Authority: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: Debbie Ullom

With a copy to: White Bear Ankele Tanaka & Waldron  
2154 E. Commons Avenue, Suite 2000  
Centennial, Colorado 80122  
P 303.858.1800  
Attention: George M. Rowley

If to Developer: CB Kiowa Holding Company, LLC  
1288 South Clayton Street  
Denver, Colorado 80210  
Attention: Jeff Keeley

With a copy to: Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 Seventeenth Street, Suite 1600  
Denver, Colorado 80202  
Attention: Brian J. Connolly

(g) Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will, unless amended or modified by consent of the parties, continue in full force and effect.

(h) Relationship to Water Authority Regulations. This Agreement will govern development of the Property as it related to the New Well and is adopted pursuant to the appropriate procedures of the Water Authority. In the event of an express or implied conflict between the terms and conditions of the Water Authority's adopted regulations and the terms and conditions set forth in this Agreement, this Agreement will control.

(i) Waiver of Breach. The waiver by any of the Parties of a breach of any term or provision of this Agreement will not operate or be construed as a waiver of any subsequent breach by any other parties.

(j) No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the parties, and nothing contained in this Agreement will give or allow any such claim or right of action by any other third person on such Agreement; provided, however, that the Developer is an express third-party beneficiary of this Agreement and, as such, shall have all claims and other rights of action hereunder and in no event may this Agreement be amended without the prior written consent of Developer. Except as expressly set forth herein with respect to Developer, it is the express intention of the parties that any person other than the parties receiving services or benefits under this Agreement will be deemed to be an incidental beneficiary only.

(k) Governing Law, Venue. This Agreement will be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement will lie with any appropriate court within Elbert County, Colorado.

(l) Authorization of Parties' Representative. The undersigned hereby represent that they serve as representatives of the entity for which they have executed this Agreement and are fully authorized to execute this Agreement on behalf of such entity.

(m) Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Water Authority, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Water Authority and, in particular, governmental immunity afforded or available to the Water Authority pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

*[Remainder of page intentionally left blank]*



IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

**DISTRICT:**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
 202\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of  
 [ \_\_\_\_\_ ].

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

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



**EXHIBIT A**  
**Legal Description of the Property**

**PARCEL A:**

A PARCEL OF PROPERTY LOCATED IN SECTION 20, TOWNSHIP 8 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ELBERT COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 20 AND CONSIDERING THE EAST LINE OF SAID SECTION 20 TO BEAR SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF 2479.01 FEET;

THENCE SOUTH 89 DEGREES 50 MINUTES 38 SECONDS WEST, A DISTANCE OF 649.98 FEET TO A POINT OF BEGINNING;

THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 672.55 FEET;

THENCE SOUTH 89 DEGREES 45 MINUTES 27 SECONDS WEST, A DISTANCE OF 200.00 FEET;

THENCE NORTH 00 DEGREES 14 MINUTES 33 SECONDS WEST, A DISTANCE OF 100.00 FEET;

THENCE SOUTH 89 DEGREES 45 MINUTES 27 SECONDS WEST, A DISTANCE OF 265.01 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, AN ARC LENGTH OF 78.54 FEET;

THENCE NORTH 00 DEGREES 14 MINUTES 33 SECONDS WEST, A DISTANCE OF 63.32 FEET;

THENCE SOUTH 89 DEGREES 50 MINUTES 38 SECONDS WEST, A DISTANCE OF 115.00 FEET;

THENCE NORTH 00 DEGREES 14 MINUTES 33 SECONDS WEST, A DISTANCE OF 180.00 FEET;

THENCE SOUTH 89 DEGREES 05 MINUTES 38 SECONDS WEST, A DISTANCE OF 494.74 FEET;

THENCE NORTH 00 DEGREES 09 MINUTES 22 SECONDS WEST, A DISTANCE OF 280.00 FEET;

THENCE NORTH 89 DEGREES 50 MINUTES 38 SECONDS EAST, A DISTANCE OF 1124.33 FEET TO THE POINT OF BEGINNING,

COUNTY OF ELBERT, STATE OF COLORADO.

**PARCEL B:**

A PARCEL OF PROPERTY LOCATED IN SECTION 20, TOWNSHIP 8 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ELBERT COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 20 AND CONSIDERING THE EAST LINE OF SAID SECTION 20 TO BEAR SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST ALONG SAID EAST LINE, A DISTANCE OF 3619.92 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 725.57 FEET;

THENCE SOUTH 89 DEGREES 56 MINUTES 02 SECONDS WEST, A DISTANCE OF 2542.24 FEET;

THENCE NORTH 00 DEGREES 21 MINUTES 08 SECONDS WEST, A DISTANCE OF 1198.44 FEET;

THENCE NORTH 89 DEGREES 38 MINUTES 52 SECONDS EAST, A DISTANCE OF 126.44 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 05 DEGREES 09 MINUTES 37 SECONDS, AN ARC LENGTH OF 29.27

FEET AND WHOSE CHORD BEARS NORTH 07 DEGREES 37 MINUTES 28 SECONDS EAST, A DISTANCE OF 29.26 FEET;  
THENCE NORTH 10 DEGREES 12 MINUTES 16 SECONDS EAST, A DISTANCE OF 620.41 FEET;  
THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 333.13 FEET;  
THENCE NORTH 24 DEGREES 23 MINUTES 16 SECONDS WEST, A DISTANCE OF 214.14 FEET;  
THENCE NORTH 70 DEGREES 24 MINUTES 57 SECONDS EAST, A DISTANCE OF 1004.69 FEET;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 506.02 FEET;  
THENCE SOUTH 00 DEGREES 09 MINUTES 22 SECONDS EAST, A DISTANCE OF 280.00 FEET;  
THENCE NORTH 89 DEGREES 50 MINUTES 38 SECONDS EAST, A DISTANCE OF 494.74 FEET;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 180.00 FEET;  
THENCE NORTH 89 DEGREES 50 MINUTES 38 SECONDS EAST, A DISTANCE OF 115.00 FEET;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 63.32 FEET TO A POINT OF CURVE;  
THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, AND AN ARC LENGTH OF 78.54 FEET;  
THENCE NORTH 89 DEGREES 45 MINUTES 27 SECONDS EAST, A DISTANCE OF 265.01 FEET;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 100.00 FEET;  
THENCE NORTH 89 DEGREES 45 MINUTES 27 SECONDS EAST, A DISTANCE OF 200.00 FEET;  
THENCE SOUTH 00 DEGREES 14 MINUTES 33 SECONDS EAST, A DISTANCE OF 469.34 FEET;  
THENCE NORTH 89 DEGREES 45 MINUTES 27 SECONDS EAST, A DISTANCE OF 649.98 FEET TO THE POINT OF BEGINNING,  
COUNTY OF ELBERT, STATE OF COLORADO.

**PARCEL C:**

A PARCEL OF PROPERTY LOCATED IN SECTION 20, TOWNSHIP 8 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, ELBERT COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 20 AND CONSIDERING THE EAST LINE OF SAID SECTION 20 TO BEAR S00°14'33"E WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;  
THENCE S00°14'33"E, ALONG SAID EAST LINE, A DISTANCE OF 2479.01 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUING S00°14'33"E, A DISTANCE OF 1,140.92 FEET;  
THENCE S89°45'27"W, A DISTANCE OF 649.98 FEET; THENCE N00°14'33"W, A DISTANCE OF 1,141.90 FEET TO A POINT ON THE SOUTH LINE OF FAWN VALLEY SUBDIVISION;  
THENCE N89°50'38"E, ALONG SAID SOUTH LINE, A DISTANCE OF 649.98 FEET TO THE POINT OF BEGINNING,  
COUNTY OF ELBERT, STATE OF COLORADO

**EXHIBIT B**  
**Description of New Well**

A new groundwater well is needed to provide some level of system redundancy and to provide adequate water supply during the maximum day demand conditions for the Town and the new development.

The new nontributary Arapahoe Aquifer groundwater well can be drilled at any location within the Town boundaries. The well site should be at least 250 feet by 250 feet to allow room for the drilling equipment and for future access to maintain the well pump and equipment. Sufficient electrical power to the site is required for the pump motor and appurtenances.

Kiowa Water & Wastewater Authority has determined the parcel that currently contains the existing alluvial well, booster pump station, and 100,000 gallon storage tank may be an appropriate location for the new well. This site is satisfactory given its proximity to the other system components including the booster pump station, chlorine injection system, storage tank, and easy access for construction and maintenance.

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Dallas Schroeder Clerk/Recorder, Elbert County, CO

**EXHIBIT C**  
**New Well Scope of Work**

*[to be added prior to execution]*

**DESIGNATION OF REPRESENTATIVE**

Craft Kiowa Acquisition Company, LLC ("Company"), designates Tim Craft as their representative for the property owned beneficially by the Company under a Purchase and Sale Contract dated August 6, 2018, and described in the Elbert County real property records as Parcel 8320418003, Parcel 8320418002, and Parcel 8320418001. This designation shall remain effective until terminated in writing by the Company. This designation is intended to meet the requirements of the Amended and Restated Kiowa Water and Wastewater Establishing Agreement, dated June 4, 2013, for Kiowa Water and Wastewater Authority, Section 2.c.

CB KIOWA HOLDING COMPANY, LLC



\_\_\_\_\_  
Tim Craft, Managing Member

1/10/22

\_\_\_\_\_  
Date