



Town Council
Tuesday, September 20, 2022
Public Meeting Room / Eagle Town Hall
200 Broadway Eagle, CO

*This agenda and the meetings can be viewed at www.Townofeagle.org.
Times listed are approximate and are subject to change.*

TOWN COUNCIL MEETING ACCESS INFORMATION AND PUBLIC PARTICIPATION

1. This will be an in-person meeting with access via Microsoft Teams. First-time users of Teams will need to download the app,

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- **Please note: All participants must remain muted until they are requested to speak. This will reduce background noise disruptions to the meeting attendees.**
- **When it's your turn to speak, you will have three (3) minutes for public comment.**
- **PUBLIC COMMENTS: If you are unable to attend, public comments regarding any items on this agenda can be submitted to Jenny Rakow, Town Clerk, and will be included as part of the record.**
- **For technical difficulties, please email jenny.rakow@townofeagle.org and we will do our best to assist you.**

CALL TO ORDER - 5:00 PM

ROLL CALL

ADOPTION OF AGENDA *Opportunity for amendment or deletions to the agenda.*

BUSINESS ITEMS *Items and / or Public Hearings are listed under Business may be old or new and may require review or action by the council.*

1. PUBLIC HEARING: File #DR21-02 Major Development Permit for Reserve at Hockett Gulch (continued from September 13, 2022)
 - a. Resolution 76, Series 2022 "A Resolution of the Town Council of the Town of Eagle, Colorado Approving a Major Development Permit, Preliminary Plan, Final Plat, and Associated Development Agreement for

Portion of Reserve at Hockett Gulch"

ADJOURN - 5:45 PM

I hereby certify that the above Notice of Meeting was posted by me in the designated location at least 24 hours prior to said meeting.



Jenny Rakow, CMC
Town Clerk

PUBLIC WIFI – Eagle Guest



To: Mayor Turnipseed and Town Council

From: Chad Phillips, A.I.C.P., Director, Community Development Department
Carrie McCool, Eagle Contract Planner

Date: September 20, 2022, Special Meeting (Continued from September 13, 2022)

Agenda Item: Resolution 76, Series 2022 of the Town Council of the Town of Eagle, Colorado approving a Major Development Permit, Preliminary Plan, Final Plat, and Associated Development Agreement for a portion of the Reserve at Hockett Gulch

REQUESTS:

- 1) Reserve at Hockett Gulch, FILE NUMBER: DR21-02 Major Development Permit (MDP) approval to construct 216 rental units and a clubhouse on 17.38 acres, and
- 2) FILE NUMBER: PPFP21-01 Preliminary Plan and Final Plat approval to subdivide 29.65 acres into three lots and two open space tracts.
- 3) Associated Development Agreement

BACKGROUND:

MDP: The proposed development permit for the first phase (Phase 1a) of Reserve at Hockett Gulch includes all of HD/PUD-1 and a portion of HD/PUD-2 and all improvements within open space tracts OS-1 and OS-2, along with the trailhead improvements and the required landscape buffer to be located on Town property adjacent to Sylvan Lake Road. A total of 216 rental units within five buildings and a clubhouse facility are proposed on 17.38 acres. Forty-five percent (45%) of the units proposed include a deed restriction requiring local residency. Additionally, the proposal includes the construction of the access on Grand Avenue and improvements to Sylvan Lake Road that provide access to the entire PUD.



Preliminary Plan and Final Plat: The applicant is requesting preliminary plan and final plat approval to subdivide the 29.65-acre property into to three residential lots, two open space tracts (OS-1 and OS-2), and two tracts (A and B) for roadway, access, drainage, irrigation, and general utilities. The proposed internal roadways are not public roads and therefore are not dedicated to the Town of Eagle. Tract OS-1 is a 3.50-acre open space parcel to be dedicated to the Town of Eagle by separate instrument. In addition to the parks and recreational uses required to be developed in Tract OS-1,

the tract is used for debris flow mitigation, stormwater facilities, public and private utilities. Tract OS-2 is 2.71 acres that will remain privately owned, but access to the tract is provided to the Town through the dedication of an open space easement allowing public access, debris flow mitigation, stormwater facilities, public and private utilities.

The PUD Guide serves as the governing land use regulations which will control the development of the PUD. However, in some instances, the PUD Guide defers to conformance with Chapter 4.07 Development Standards. A full analysis of the application and Code standards is provided in the Staff Report to the Planning & Zoning

Commission dated June 7, 2022 ([LINK](#)) but was based on submittal documents that had errors in square footage and area calculation that stemmed from base mapping errors. These mapping errors impacted all other coordinated drawings (e.g., landscape plan, lighting plan, architectural design plan, etc.). As such, fourteen (14) conditions of approval were recommended wherein the Applicant was given a deadline of June 9, 2022, to submit a revised Major Development Permit Plan set that demonstrated PUD Guide and Code compliance.

A resubmittal was received on June 9 and 10, 2022, that still had errors wherein the most substantial issues related to building coverage, impervious coverage, floor area ratio (FAR) and open space calculations stemming from the discrepancy between the PUD Guide and Title 4. In order to ensure conformance with each, it was determined that the lot layout needed to follow the planning area boundaries of the PUD Zoning Plan. As a result, OS-1 and OS-2 were reduced and Tract A (private streets) was split into two tracts (Tract A within HD/PUD 1 & 2 and Tract B within HD/PUD-3) to accommodate land area so area calculations (density, building coverage, impervious coverage and FAR) could comply with the PUD Guide requirements.

A resubmittal was received on July 1, 2022. While progress was made in the resubmittal, additional information was still being received and required staff review. The staff analysis contained in the July 26, 2022, staff report ([LINK](#)) was focused on how the Planning and Zoning Commission conditions of approval had been addressed. The public hearing provided the opportunity for the Applicant to receive Council feedback that could be incorporated into revised plans to be considered at a second public hearing. At the July 26, 2022, Town Council public hearing, the following key issues were discussed for resolve prior to taking action on the application:

- Usable Open Space.
- Raw Water System and Irrigation.
- Status of Planning and Zoning Commission recommended conditions of approval.

A resubmittal was received on August 1, 2022, wherein progress had been made, but additional submittal information has resulted in additional staff comments. Most notable is the inadequacy of the cost estimates required to draft the subsequent Development Agreement. As such, the following analysis is limited to:

- How the Planning and Zoning Commissions conditions of approval have been addressed,
- Outstanding staff comments/recommendations based on requirements set forth in [Chapter 4.07](#) and [Section 4.06.070](#) of the Land Use and Development Code,
- How the [Reserve at Hockett Gulch PUD Guide](#) and [Annexation Agreement](#) have been addressed, and
- How Council feedback has been incorporated into the August 1st resubmittal.

On August 23rd, Town Council continued the hearing to September 13th, 2022, for the Applicant to provide staff with information required to consider the applications for approval. Staff had received a resubmittal from the applicant on August 29th. At the September 13th hearing, Council determined that the application was still lacking information required to make a decision, so the hearing was again continued. Council decided to schedule a special hearing, one week later on September 20th. At the recommendation of the Town Attorney, Council did pass a motion to direct staff to include in the Development Agreement language approving the Town's contribution for upsizing of the water main.

Immediately following the September 13th hearing, the applicant has been working with staff and the Town Attorney to address shortcomings and clarification. The newest version of the Development Agreement reflects the updated information. Staff recommends moving forward with the hearing where Council will consider the MDP, Preliminary Plan & Final Plat, and the Development Agreement.

ANALYSIS:

Since the September 13th hearing, major changes to the Development Agreement include:

- Town committing to pay the difference in cost to upsize the water main from 12" to 16"

- Adjusted Cost Estimate list and language to cover any items not included in the list that are shown as required improvements in the plan documents
- Clarification on deadlines for improvements completion and surety release
- Reduction in Public Works inspection response from 60 to 30 days

At the hearing, the applicant asked Council about changes to the Local Employee Residency Program restrictions associated with the Annexation Agreement. Council informed them to put together a request in writing and submit to staff in time to evaluate at part of this staff memo. As of this writing, no request has been received by staff.

COMMUNITY INPUT:

Staff has not received any additional public comment since the September 13th staff packet.

BUDGET / STAFF IMPACT:

No impact to the budget.

STRATEGIC PLAN ALIGNMENT / STANDARDS ACHIEVED:

Once all Planning and Zoning Commission recommended conditions of approval are addressed, the application would support the following Council objectives:

- **Major Objective 8: Invest in Environmental and Energy Sustainability.** The application reflects a focus on sustaining natural resources by incorporating green practices in the multi-family development by including all electric heating and appliances within units, electric vehicle charging stations, a raw water irrigation system, and building construction has been designed to meet or exceed the 2018 International Energy Efficiency Code.
- **Major Objective 9: Diversity the Attainable Housing Stock.** The application creates the opportunity for a diverse, attainable housing stock by providing 216 multi-family rental units with 98 deed restricted units to the housing market.

RECOMMENDED ACTION OR PROPOSED MOTION:

I move to approve Resolution 76, Series 2022 of the Town Council of the Town of Eagle, Colorado approving a Major Development Permit, Preliminary Plan, Final Plat, and Associated Development Agreement for a portion of the Reserve at Hockett Gulch.

ATTACHMENTS:

- Development Agreement
- August 23rd Town Council staff memo ([LINK](#)).
- Video and packet information from the September 13, 2022 Hearing ([LINK](#))

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into and made effective as of the _____ day of September, 2022 (the "Effective Date"), by and between the TOWN OF EAGLE, COLORADO, a Colorado home rule municipality with an address of P.O. Box 609, Eagle, CO 81631 (the "Town"); and EPOCH GCH HOCKETT GULCH HOLDINGS LLC, a Colorado limited liability company with an address of c/o Epoch Properties, Inc., 359 Carolina Avenue, Winter Park, FL 32789, Attention: Justin Sand ("Developer") (each a "Party" and collectively the "Parties").

WHEREAS, Developer owns the real property located within the Town and more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, on June 10, 2019 the Town approved a Planned Unit Development for the Property (the "PUD");

WHEREAS, Developer desires to develop the Property as the Reserve at Hockett Gulch, a High Density Multi-Family Residential project (the "Development") and has filed an application for a Preliminary Plan for the Property, a Final Subdivision Plat for the Property (the "Final Plat"), and an application for a Major Development Permit for Phase 1a of the Development, a copy of which attached hereto as **Exhibit B** and incorporated herein by this reference (the "MDP"); and

WHEREAS, the Parties agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town upon Developer in relation to the Development.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1 – SCOPE

1.1 Purpose. This Agreement is intended to set forth the Parties' understanding and agreement as to the Development, including without limitation the procedures, limitations and standards applicable to the construction of public and other required improvements to be installed to serve the Property, the responsibilities of the Parties for maintenance, various costs, fees and charges, and as to such other matters the Parties believe can be adequately addressed at this time.

1.2 Rights Reserved. It is not the intention of the Parties to diminish or limit the Town's legislative, quasi-judicial, or other powers or to impose on the Town any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the Town to approve or accept any future applications, plans, drawings, security documents, improvements, and conveyances, except as otherwise set forth in this Agreement.

SECTION 2 –DEVELOPER'S OBLIGATIONS

2.1 General. Developer shall, at its own expense, design, construct and install all public improvements necessary for the Development, including without limitation streets, alleys, curbs, gutters, sidewalks, landscaping, irrigation, fencing, street lights, water, waste water, storm sewer and drainage facilities, and trails and park improvements (collectively the "Improvements"). A list of the required Improvements is set forth in **Exhibit C**, attached hereto and incorporated herein by this reference. Also included in **Exhibit C** are the estimated costs of the Improvements (the "Estimated Costs") and the various deadlines for completion of the Improvements. Omission of any necessary Improvement from **Exhibit C** does not relieve Developer from responsibility for furnishing, installing or constructing such Improvement.

2.2 Improvements Required for MDP.

a. *Intersection Improvements.* Prior to the issuance of a building permit for the first three buildings (the Clubhouse and Buildings 1 and 2 as depicted in the MDP), Developer shall construct the following Improvements: the Grand Avenue/Mount Powell Road intersection; and the Sylvan Lake Road/Mount Powell Road temporary emergency vehicle access as required by the Greater Eagle Fire Protection District (collectively, the "Preliminary Improvements"). Prior to completion of the Preliminary Improvements, foundations for the residential units may be constructed only with the approval of the Greater Eagle Fire Protection District and the issuance of a foundation-only building permit by the Building Official.

b. *Parking.* All parking spaces identified on the MDP shall be constructed in Phase 1a and within the applicable Phase as shown on **Exhibit C**. Up to 76 spaces from Phase 1a may be thereafter be used to fulfill the parking requirements for Phase 1b.

c. *Other Improvements.* Prior to the issuance of any building permits for any structure within a subsequent Phase as shown on **Exhibit C**, the following Improvements shall be installed in such Phase pursuant to the Plans: the Improvements for fire suppression, temporary access and temporary storm water mitigation in accordance with the Plans, all as sufficient to comply with applicable law and requirements of the Greater Eagle Fire Protection District.

2.3 Improvements Required for Final Plat.

a. *Deadlines.* The deadlines for the completion of the Improvements are outlined on **Exhibit C**, with the Completion Month shown on **Exhibit C** being the number of months of the Effective Date.

b. *Raw Water Irrigation System.*

i. Unless Developer is legally prohibited from doing so and provides evidence thereof to the reasonable satisfaction of the Town, Developer shall install, maintain, operate, repair and replace a raw water irrigation system, including the diversion structure, pump station and raw water transmission main line from the pump station to

the Development (the "Raw Water Irrigation System") to provide nonpotable water for irrigation of permanently irrigated landscaped areas in the Development, unless Developer is legally prohibited from doing so and provides evidence thereof to the reasonable satisfaction of the Town. Ownership and responsibility for this Raw Water Irrigation System shall belong to Developer, its successors and assigns. If more than one party succeeds to Developer, the parties shall ensure that they continue this operation, maintenance repair and replacement. The Town will grant a revocable license to Developer for installation of the Raw Water Irrigation System across property owned or controlled by the Town. The Town will also lease back to Developer, pursuant to a separate written agreement in form and substance reasonably satisfactory to the Parties (the "Water Rights Lease", the water rights necessary to operate the raw water irrigation system. Developer shall provide the design of the Raw Water Irrigation System to the Town for approval within 180 days of the Effective Date. Also, within 180 days of the Effective Date, Developer shall provide the Town with copies of recorded easements from the Medical Center and any other parties reasonably required to permit the installation and maintenance of the pump station, pipeline, and any other elements of the Raw Water Irrigation System. The Town shall obtain approval from the Army Corps of Engineers to construct the pump station in the location described in the MDP, and Developer shall reasonably cooperate with the Town, as needed, in seeking such approval. The Raw Water Irrigation System will be designed and built to provide enough water and the appropriate water pressure to irrigate permanent landscape areas in Phase 1a, Phase 1b and Phase 2. The plan shall include specific notes that all underground irrigation lines installed in Town rights-of-way or Town easements shall be locatable, registered with CO 811 program, and meet Colorado 811 requirements. The Raw Water Irrigation System shall be installed and operational within 180 days of the later of (i) the Town's execution of the Water Rights Lease, and (ii) a final decree entered by the Water Court in and for Water Division No. 5 approving the change in the point of diversion described below. At this deadline, the irrigation system for the Property shall be disconnected from the Town's municipal water system (see below).

ii. Within 30 days of the Effective Date, Developer shall deposit \$50,000 with the Town to fund the Town's anticipated Water Court legal costs to relocate the point of diversion for the Town's interest in Ditch No. 3 to accommodate the pump station (the "Water Court Action". At Developer's request, the Town shall deliver to Developer a statement of all actual, out-of-pocket legal costs paid by the Town to third parties in connection with the Water Court Action, including without limitation attorneys and engineering consultants. Any portion of the \$50,000 deposit not actually expended by the Town on third-party legal costs in connection with the Water Court Action shall promptly be remitted to Developer. Within 90 days of the Effective Date, Developer shall provide the information in Developer's possession or control that is reasonably required for the Town to file a case in Water Court to change the point of diversion for the Raw Water Irrigation System as described in Section 2.3.b.1. Until the Raw Water Irrigation System becomes operational, Developer shall connect the irrigation system for the Property to the Town's municipal (potable) water system and shall pay the then-applicable water

service rates for the same. If the Parties are legally prohibited from locating the pump station or changing the point of diversion for the same, the Town will allow Developer to maintain its connection to the Town's potable water system for irrigation; however, Developer shall repay the Raw Water Irrigation Credit described below within 90 days of such legal determination.

2.4 Oversizing.

a. *Water Line.* The Development requires a 12" Ductile Iron Pipe water line as shown on the Plans, but the Town has required that Developer install a 16" Ductile Iron Pipe water line. Developer has, prior to the Effective Date, obtained a bid from its preferred contractor for construction and installation of the 12" water line, and a bid from its preferred contractor for construction and installation of the 16" water line and presented the same to the Town Engineer. Upon approval of such costs by the Eagle Town Council, the Town shall be responsible for the increase in costs between the 12" Ductile Iron Pipe water line bid and the 16" Ductile Iron Pipe water line bid, which the Parties currently estimate to be \$198,752. In no case shall the amount owed by the Town exceed the amount approved by the Eagle Town Council.

b. *Trailhead Restroom.* Developer is required to install a waterless vault toilet system restroom on Eagle Ranch Filing 3 Tract OS-1, as shown on the Plans, but the Town may require that Developer install water-and sewer-serviced restroom. Within 60 days of the Effective Date, Developer shall obtain a bid from its preferred contractor for the design and construction of the waterless vault toilet system; and a bid from its preferred contractor for the design and construction of a water- and sewer-serviced restroom, and present the bids to the Town Engineer, who may accept the bids or may ask for additional bids. Once the Town Engineer accepts the bids, the increase between the two bids shall be used to determine the Town's share of the actual costs to install the water- and sewer-serviced restroom. Upon calculation of the Town's share, the Eagle Town Council shall determine, in its sole discretion, whether the Town will pay for the oversizing.

c. *Payment.* If the Eagle Town Council determines that it will pay for either oversizing, the Town's payment shall be due and payable within 30 days of Initial Acceptance of the requisite Improvement.

2.5 Construction.

a. Developer shall construct all Improvements in accordance with plans approved by the Town (the "Plans"), as well as the Town's applicable standards and specifications (the "Standards"). Developer shall furnish, at its expense, all necessary engineering and consulting services relating to the design and construction of the Improvements.

b. At Developer's expense, the Town may make reasonable engineering observations and require testing during construction of the required Improvements in such reasonable intervals and upon reasonable notice, as the Town Engineer may request, in accordance with the Town's engineering standards, Water Distribution Regulations, and

Wastewater Regulations, or as otherwise determined by the Town Engineer. Observation, acquiescence in or approval by any inspector shall not constitute the approval by the Town of any portion of such Improvements.

c. Developer shall provide all necessary engineering designs, surveys, field surveys, and as-built drawings for all Improvements which shall be approved by the Town Engineer. The as-built locations of all utility service lines shall be prepared by a registered land surveyor at Developer's sole expense. No Certificate of Occupancy shall be issued until the required as-built drawings have been submitted to the Town for the Improvements that are part of the application for the Certificate of Occupancy.

D. Developer shall comply with the Phasing Plan set forth in **Exhibit D**.

2.6 Compliance with Applicable Law. Developer shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

2.7 Nuisances. Developer shall prevent the existence of any nuisances as defined by the Code; provided that, for purposes of this Section, the presence of ground squirrels, vermin or noxious weeds on the Property shall be deemed nuisances. If the Town determines that a nuisance exists, Developer shall promptly remove or abate such nuisance at Developer's sole cost. If the nuisance is not abated to the reasonable satisfaction of the Town within 30 days following Developer's receipt of written notice from the Town describing the nuisance, the Town may draw upon the Performance Guarantee to pay the cost of abating the nuisance, including any expenses and penalties incurred under the Code. The Town may exercise this right in addition to, or in lieu of, other available remedies. The decision to draw on the Performance Guarantee shall be within the sole discretion of the Town.

SECTION 3 – WATER AND WASTEWATER

3.1 Dedication of Water Rights. The Town acknowledges that: water rights have previously been dedicated to the Town; and cash in lieu of water rights has previously been paid to the

Town; all in satisfaction of Code requirements to provide potable water service to the Development.

3.2 Potable Water System Improvements and Service.

a. Developer, at its sole cost and expense, in accordance with the Code, shall design, purchase and install all elements of the potable water system located on the Property to fully service the Development in accordance with all Code requirements and any designs or drawings approved by the Town. Upon Initial Acceptance of the potable water system and full payment of any applicable plant investment fees and utility connection charges at the then applicable rate set forth in the Code, the Town shall provide municipal treated water service to the Development. The plant investment fee shall be fully paid for each building permit, in accordance with the fee schedule in the Code at that time.

b. Code § 12.16.060 currently allows for a raw water irrigation credit toward the equivalent residential units ("EQR") calculation for residential units for assessing the water plant investment fees. The current raw water irrigation credit in the Code is at a rate of 0.25 EQR per 2,500 square feet of permanently irrigated landscaped area, not to exceed 25% of the total EQR (the "Raw Water Irrigation Credit"). The Raw Water Irrigation credit shall be available for the Development in the event the Developer determines that the raw water irrigation system is not legally prohibited from construction and is either in the process of constructing such system or applying for the necessary permits to do so. Such credit shall be calculated based upon this formula, regardless of any future Code changes, and the applicable water plant investment fees shall be paid at the time building permits are obtained based upon the permanently irrigated landscaped area associated with that building permit. For example, if a building permit is issued for 100 multi-family units, under Code § 12.16.060, this would yield a credit calculated upon a total of 50,000 square feet of permanently irrigated landscaped area – 100 units x 500 square feet of irrigation allowed per unit, which would result in a credit of up to 20 EQR. The amount of permanently irrigated landscaped area must be adequately shown to the building department at the time of permit to support the Raw Water Irrigation Credit.

c. As of the Effective Date, the Code allows for a 50% reduction in water plant investment fees for each local employee residence in the Development (the "Housing Credit"). The Parties hereby agree that the Housing Credit will apply to all for-sale and for-rent local employee residences in the Development that meet the criteria set forth in Section 7. Notwithstanding the foregoing, the Housing Credit shall be capped at 22.5% of the total for-rent local employee residences located within PUD-1, PUD-2, and PUD-3, as depicted and described in the PUD. The Housing Credit shall remain at 50%, even if the Code is revised after the Effective Date.

3.3 Wastewater Collection System Improvements. Developer, at its sole cost and expense, shall design, purchase, and install all elements of the wastewater collection system located on the Property to fully service the Development in accordance with the Code and the Plans.

3.4 Wastewater Service. Upon Initial Acceptance of any wastewater collection system Improvements and full payment of all applicable plant investment fees, the Town agrees to provide wastewater treatment and collection service to the Development. Developer shall pay all applicable plant investment fees for each building permit for the Development, in accordance with the fee schedule set in the Code at that time.

SECTION 4 – ACCEPTANCE OF IMPROVEMENTS AND WARRANTY

4.1 Initial Acceptance. No later than 10 days after Improvements are substantially complete, Developer shall request an inspection by the Town. If Developer does not request this inspection, the Town may conduct the inspection without Developer's approval. The Town shall conduct the inspection within 30 days of receipt of Developer's request.

a. If the Improvements are satisfactory, the Town shall grant Initial Acceptance.

b. If the Improvements are not satisfactory, the Town shall provide written notice to Developer of the repairs, replacements, construction or other work required to receive Initial Acceptance (the "Initial Acceptance Punch List"). Developer shall complete the Punch List within 180 days of said notice. After Developer completes the Punch List, Developer shall request of the Town a re-inspection of such work to determine if Initial Acceptance can be granted, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work within 30 days of the reinspection. If Developer does not complete the Initial Acceptance Punch List within 180 days, Developer shall be in breach of this Agreement. The costs of re-inspection shall be borne by Developer.

4.2. Warranty. For all Improvements, Developer shall provide the Town with a 2-year warranty, commencing on the date of Initial Acceptance (the "Warranty Period"). Specifically, but not by way of limitation, Developer shall warrant that: the title is marketable and its transfer rightful; the Improvements are free from any security interest or other lien or encumbrance; and the Improvements are free of defects in materials or workmanship. During the Warranty Period, Developer shall, at its own expense, take all actions necessary to maintain the Improvements and make all necessary repairs or replacements.

4.3 Final Acceptance. At least 60 days before 2 years has elapsed from the issuance of Initial Acceptance, Developer shall request an inspection of the Improvements by the Town. If Developer does not request this inspection, the Town may conduct the inspection without Developer's approval. The Town shall conduct the inspection within 30 days of receipt of Developer's request.

a. If the Improvements are satisfactory, the Town shall grant Final Acceptance.

b. If the Improvements are not satisfactory, the Town shall provide written notice to Developer of the repairs, replacements, construction or other work required to receive Final Acceptance (the "Final Acceptance Punch List"). After Developer completes the Final Acceptance Punch List, Developer shall request of the Town a re-inspection of such work to determine if Final

Acceptance can be granted, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work. If Developer does not complete the work described in the Final Acceptance Punch List within 30 days, the Warranty Period shall be extended until the work described in the Final Acceptance Punch List has been completed, and Developer shall also be in breach of this Agreement. The costs of re-inspection shall be borne by Developer.

SECTION 5 – PERFORMANCE GUARANTEE

5.1 General. To secure the construction and installation of the Improvements shown on Exhibit B, Developer shall furnish the Town with a performance guarantee in compliance with the Code and approved by the Town (the "Performance Guarantee"). Developer shall provide the executed Performance Guarantee prior to commencing any work on the Property.

5.2 Adjustments in Estimated Costs. Developer has not provided sufficient detail for all of the Estimated Costs, and the Estimated Costs may increase in the future. Accordingly, the Town reserves the right to review and adjust the Estimated Costs based on additional detail and inflationary increases. Adjustments for increases shall be made according to changes in the Construction Costs Index as published by the Engineering News Record. The Estimated Costs shall be adjusted no more than once per calendar year. If the Town adjusts the Estimated Costs, the Town shall give written notice to Developer, and Developer shall, within 30 days, provide the Town with a new or amended Performance Guarantee in the amount of the adjusted Estimated Costs. If Developer fails to provide a new or amended Performance Guarantee, the Town may exercise the remedies provided for in this Agreement; provided, however, that prior to increasing the amount of the Performance Guarantee, the Town shall give credit to Developer for all Improvements that have received Initial Acceptance, so that the amount of the Performance Guarantee relates to the cost of required Improvements not yet accepted by the Town.

5.3 Partial Release. Following Initial Acceptance of portions of the Improvements, the amount of the Performance Guarantee for such Improvements shall be reduced to 10% of the cost for of such Improvements as provided on **Exhibit C**.

5.4 Full Release. The Performance Guarantee shall be fully released and discharged by the Town within 30 days of expiration of the Warranty Period.

5.5 Draw. If the required Improvements are not satisfactorily constructed or completed in the time and manner required herein, the Town may, after first giving Developer written notice of such failure and not less than 30 days to cure such failure, draw on the Performance Guarantee to complete the Improvements. If the Performance Guarantee is to expire within 14 calendar days and Developer has not yet provided a satisfactory replacement or satisfactorily completed the Improvements, the Town may draw on the Performance Guarantee and either hold such funds as security for performance of this Agreement or spend such funds to complete the Improvements or correct problems with the Improvements as the Town deems appropriate.

5.6 Deferred Installation of Landscaping. If any landscaping within a Phase remains uncompleted because of weather conditions, then, prior to issuance of any certificates of

occupancy in any Phase, Developer shall ensure that the Performance Guarantee associated with the landscaping of such Phase remains in place, and the Performance Guarantee shall not be released until all planting and materials shown on the Plans are installed and accepted and the irrigation is installed and functional in compliance with the Plans. The Town shall have the right to draw on the Performance Guarantee for any landscaping or irrigation Improvements that are not installed during the next season in which weather permits installation. Any costs incurred by the Town in excess of the funds provided by the Performance Guarantee shall be payable by Developer within 30 days after receipt of invoices. If Developer fails to pay such amounts, the same may be recovered by the Town by any lawful means, including certification to the County Treasurer for collection in the same manner as real estate taxes.

SECTION 6- MAINTENANCE

6.1 Improvements. Unless dedicated to and accepted in writing by the Town for maintenance, all Improvements shall be maintained by Developer, and for any Improvements that will be maintained by the Town, a separate maintenance agreement shall be required. Initial Acceptance or Final Acceptance by the Town of ownership of any Improvement does not constitute acceptance by the Town of maintenance for such Improvement. If Developer wishes to transfer maintenance obligations to any other entity, including an owners' association, Developer shall obtain prior written approval from the Town.

6.2. Vacant Lots/Tracts. Developer shall be responsible for maintenance, including without limitation weed control, vermin control and debris removal, on all vacant lots and tracts until such time as such lots or tracts are developed.

SECTION 7 – LOCAL EMPLOYEE RESIDENCY PROGRAM

7.1 General. To satisfy Code § 4.04.110, and because the Development includes a significant number of housing opportunities targeted at the local workforce population, the Development shall be permitted to vary from the Town's Local Employee Housing Program ("LERP") requirements as described herein. Specifically, while the Code would require that 10% of for-sale residential units be restricted for local employee residency, 15% of the for-sale residential units in the Development shall be subject to the for-sale deed restriction attached hereto as **Exhibit E** and incorporated herein by this reference (the "Deed Restriction"). In addition, 45% of the for-rent residential units in the Development shall be subject to the rental restriction attached hereto as **Exhibit F** and incorporated herein by this reference (the "Rental Restriction"). The Rental Restriction shall apply in the aggregate, requiring that 45% of the for-rent residential units existing at any time be restricted for local employee residency.

7.2 MDP Requirements. In accordance with the MDP, in Phase 1a, Developer shall construct 216 for-rent residential units, of which 98 shall be subject to the Rental Restriction. The Rental Restriction for the 98 units shall be recorded prior to issuance of any building permits within Phase 1a.

7.3 Final Plat Requirements.

a. Any plat for the Development containing for-sale residential units shall note that at least 15% of the for-sale residential units in the plat will be subject to the Deed Restriction. The Deed Restriction shall be recorded prior to issuance of any building permits for such units.

b. Any plat for the Development containing for-rent residential units shall note that the applicable portion of the Property within the plat will be subject to the Rental Restriction. The Rental Restriction shall be recorded prior to the issuance of any building permits for property subject to the Rental Restriction.

c. If a for-sale residential unit subject to the Deed Restriction is rented in whole or in part, such unit shall comply with the Deed Restriction, but will not be counted as a for-rent residential unit for determining compliance with the Rental Restriction.

SECTION 8 – INDEMNIFICATION

8.1 By Contractors. Any contractor employed by Developer who performs work in rights-of-way or easements dedicated to the Town or on other property owned by the Town shall agree to indemnify and hold harmless the Town, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with work performed by such contractor for Developer within Town rights-of-way, easements or other property, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of such contractor, any subcontractor of the contractor, or any officer, employee, representative, or agent of such contractor or of any subcontractor of the contractor, or which arise out of any workers compensation claim of any employee of the contractor or of any employee of any subcontractor of the contractor.

8.2 By Developer. In addition to the indemnification required by Section 8.1, Developer hereby expressly agrees to indemnify and hold the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity, excluding Town officers, agents or employees, in connection with, or on account of the performance of work within the Development and elsewhere by Developer, or its agents, contractors or employees pursuant to this Agreement.

SECTION 9 – INSURANCE

9.1 Required. Developer and every contractor hired by Developer to perform work under this Agreement shall procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by such contractor.

9.2 Amounts. The required coverages set forth below shall be procured and maintained with forms and insurers acceptable to the Town.

a. Workers compensation insurance to cover obligations imposed by applicable Colorado law for any employee engaged in the performance of work.

b. General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual, and employee acts), blanket contractual independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

9.3 Form. The policies shall be endorsed to include the Town and the Town's officers and employees as additional insureds. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Every policy shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any insurance pool of the Town, shall be excess and not contributory insurance to that provided by Developer. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations. Developer shall be solely responsible for deductible losses under any policy required above.

9.4 Certificate. Upon request by the Town, Developer shall provide the Town with a certificate of insurance as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policy shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been provided to the Town.

SECTION 10 – FEES AND DEDICATIONS

10.1 Development Review Costs. Pursuant to Section 4.03.080(C)(2) of the Code, Developer shall pay to the Town the actual costs incurred by the Town for consulting, engineering, surveying, base map updating, consultant planning services, publication costs, and legal services rendered in connection with Developer's application. Said costs shall be paid prior to the issuance of the first certificate of occupancy for the Development.

10.2 Inspection Costs. Pursuant to Section 4.03.080(D)(1) of the Code, prior to acceptance of the Improvements, Developer shall pay to the Town the actual cost of all inspections of such Improvements made or conducted by the Town.

10.3 Sewer Plant Investment Fee (PIF). The sewer plant investment fee set forth in Code § 12.36.030, shall be paid prior to issuance of each building permit, under the Code in effect at the time of the building permit application.

10.5 Water PIF. The water plant investment fee required by Code § 12.16.010 shall be paid prior to issuance of each building permit, under the Code in effect at the time of the building permit application and utilizing the Housing Credit and Raw Water Irrigation Credit.

10.6 Cash-in-lieu of Water Rights Dedication for Potable System. Developer has satisfied this requirement by a cash payment of \$953,750.

10.7 Grand Avenue Improvement Fee. Upon issuance of each building permit for the Development, Developer shall pay a Grand Avenue improvement fee (each a "Grand Ave Improvement Fee") to mitigate the impacts of the Development on vehicular traffic on Grand Avenue. The Grand Ave Improvement Fee shall be based on the number and type of dwelling unit approved pursuant to the subject building permit, and an EQR total shall be calculated for such building permit pursuant to the table of equivalent units provided in Code § 12.16.060 (the "EQR Total"). The EQR Total for each building permit shall then be multiplied by \$3,500, which shall be the Grand Ave Improvement Fee for the subject building permit. The first building permit for the Development shall receive a credit of the EQR Credit against the EQR Total in calculating the Grand Ave Improvement Fee for such building permit (thereby reducing the EQR Total by 88 EQRs).

10.8 West Eagle Ranch Recapture Fee.

a. The Parties acknowledge that on or about November 13, 2007, the Town and West Eagle Ranch, LLC entered into a Memorandum of Understanding and Infrastructure Improvements Recapture Agreement (the "Recapture Agreement"). Under the Recapture Agreement, Developer is required to pay the Town a *pro rata* share of the cost incurred by West Eagle Ranch, LLC for improvements known as the U.S. Highway 6 access improvements (the "Highway 6 Improvements") and certain wastewater improvements (the "Wastewater Improvements"), as described in the Recapture Agreement. While the Recapture Agreement also provides for reimbursement of costs for certain Sylvan Lake Road extension improvements (the "SLR Extension"), the Parties agree that the Development is not benefitted the SLR Extension, and therefore, Developer does not owe any amounts for the SLR Extension.

b. In accordance with the Recapture Agreement, the Town Engineer has calculated the pro rata share of the costs of the Highway 6 Improvements as set forth in Exhibit B, attached hereto and incorporated herein by this reference. Developer's share of the Highway 6 Improvements is \$395,321.64 (the "Highway 6 Recapture Amount").

c. In accordance with the Recapture Agreement, the Town Engineer has calculated the *pro rata* share of the costs of the Wastewater Improvements. Developer's share of the Wastewater Improvements is \$ 32,382.33 (the "Wastewater Recapture Amount").

d. Upon the issuance of each Development Permit for the Development, Developer shall pay to the Town a proportional amount owed, based on the number of EQRs for that Development Permit (calculated based on the number and type of residential dwelling units approved for each development permit and the schedule of EQRs provided by the Code)

multiplied by \$1,080.06. Within 10 days of receipt, the Town will then pay to West Eagle Ranch, LLC, or its successors and assigns, such amount. In no event shall the total amount paid by Developer exceed the sum of the Highway 6 Recapture Amount and the Wastewater Recapture Amount.

e. In the event of a demand by West Eagle Ranch, LLC, to the Town for payment of a lump sum, or in the event of threatened or pending litigation by West Eagle Ranch, LLC, Developer may elect to pay in a lump sum amount all recapture fees due and owing. Developer will cooperate with the Town in taking reasonable actions to defend against any litigation brought by West Eagle Ranch, LLC or its successors and assigns, arising from, related to or as a result of the Parties' agreement that Developer may make payments of the recapture fees concurrently with the approval of building permits instead of upon execution of this Agreement. Developer agrees to pay all costs for the Town's defense in any such litigation, including without limitation reasonable and necessary attorney fees and legal assistant fees, within 30 days of the date of any bill or statement for such fees and costs.

f. The Highway 6 Recapture Amount and the Wastewater Recapture Amount were calculated as though Eagle Ranch, Haymeadow, and the Development were the only developments that benefit from the Highway 6 Improvements and the Wastewater Improvements. It is possible, however, that future developments on newly annexed lands into the Town may also benefit from those improvements and therefore be obligated to pay cost recovery amounts pursuant to the Recapture Agreement. The Town agrees that Developer, Haymeadow and West Eagle Ranch, LLC may be entitled to future reimbursement payments pursuant to the Recapture Agreement in proportion to the amounts each has paid thereunder. Therefore, if any amounts are collected by the Town under the Recapture Agreement in the future, Developer will be entitled to additional proportional reimbursements.

10.9 Street Improvement Fee. The street improvement fee set forth in Code § 4.13.220 shall be paid prior to issuance of each building permit, under the Code in effect at the time of the building permit application.

10.10 Fire Protection Impact Fee. The fire protection impact fee set forth in Code § 4.13.230 shall be paid prior to issuance of each building permit, under the Code in effect at the time of the building permit application.

10.11 School Land Dedication. Developer has met the necessary requirements for school land dedication.

10.12 Easements. Developer shall dedicate to the Town, at no cost, free and clear of any liens and encumbrances, easements required for extension of utilities, drainage, access, or any other use depicted in the Final Plat or the Plans.

10.13 Conveyance of Parcel OS-1. At the time of the recording of the Final Plat, Parcel OS-1 shall be conveyed to the Town by special warranty deed, subject to all matters of record (except

monetary liens) and subject to the reservation of any temporary or permanent easements necessary for construction, utilities, debris flow mitigation, drainage and fencing.

SECTION 11 – VESTED RIGHTS

The PUD, together with any conditions of approval imposed by the Board of Trustees, constitutes a "Site Specific Development Plan" under the Code and C.R.S. § 24-68-101, *et seq.* Developer shall have a vested property right to undertake and complete the Development and use the Property under the terms and conditions set forth in the PUD. The vested rights shall continue for 4 years after the Effective Date. After expiration of the vested rights term, the vested rights shall be deemed terminated and of no further force or effect. The establishment of vested rights shall not preclude the application of Town regulations of general applicability, including without limitation local improvement districts, building, fire, plumbing, engineering, electrical, and mechanical codes, or the application of regional, state, or federal regulations, as all of the foregoing exist on the Effective Date or may be enacted or amended after the Effective Date.

SECTION 12 – BREACH AND REMEDIES

12.1 Breach. Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to the Performance Guarantee, the Town shall provide Developer 30 days' written notice of its intent to take any action under this Section, during which Developer may cure the breach and prevent further action by the Town; provided, however, that if the nature of the breach is such that it cannot be reasonably cured within 30 days, Developer shall have such longer period of time as may be reasonably required to effect such cure, not to exceed 60 days.

12.2 Remedies. If Developer breaches any provision of this Agreement, the Town may take such action as permitted or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare. The remedies include without limitation:

- a. The refusal to issue any building permit or certificate of occupancy;
- b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- c. A demand that the Performance Guarantee be paid or honored; or
- d. Any other remedy available at law or in equity.

12.3 Additional Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

SECTION 13 – MISCELLANEOUS

13.1 Assignment.

a. This Agreement shall not be assigned in whole or in part by Developer without the prior written consent of the Town; provided, however, that, as stated in Section 13.9, this Agreement runs with the land, and as such, the Agreement will automatically transfer to any subsequent owner of the Property.

b. Developer may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof, one or more mortgages (each a "Permitted Mortgage"). The holder of any Permitted Mortgage (a "Permitted Mortgagee") may transfer its interest in a Permitted Mortgage without the consent of the Town and without affecting the status of such mortgage as a Permitted Mortgage. A Permitted Mortgagee may exercise its remedies upon a default under a Permitted Mortgage, including acquiring title in the Property in its name or the name of any purchaser through foreclosure and by such Permitted Mortgagee accepting a deed in lieu of foreclosure, without the consent of the Town, and such foreclosure, sale, or deed in lieu of foreclosure shall not be deemed an assignment under this Agreement. Provided that the Town has notice of the Permitted Mortgagee, the Town agrees to provide such Permitted Mortgagee with copies of notices sent pursuant to this Agreement and to permit such Permitted Mortgagee to cure any default for which a cure period is provided in this Agreement, provided that, if the Permitted Mortgagee is required to have title to and possession of the Property to cure such default, then Permitted Mortgagee shall be given an additional 30 days after such Permitted Mortgage has acquired title to the Property to cure any such default.

13.2 Governing Law and Venue. The laws of the State of Colorado shall govern this Agreement, and the exclusive venue for any legal proceeding arising out of this Agreement shall be Eagle County, Colorado.

13.3 No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement.

13.4 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

13.5 Governmental Immunity. Nothing herein shall be construed as a waiver of any protections or immunities the Town or its employees, officials or attorneys may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

13.6 No Joint Venture. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

13.7 Notice. Notices under this Agreement shall be sufficiently given if sent by regular U.S. mail, postage prepaid, to the address on the first page of this Agreement.

13.8 Integration. This Agreement, together with all exhibits attached hereto, constitute the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein or incidental thereto, and supersedes all negotiations or previous arrangements between the Parties with respect to any and all of the subject matter hereof. The Annexation Agreement dated September 10, 2019 is hereby terminated by this Agreement.

13.9 Recordation. This Agreement shall be recorded in the real estate records of the Eagle County Clerk and Recorder, and shall be a covenant running with the Property.

13.10 Force Majeure. No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

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

TOWN OF EAGLE, COLORADO

Scott Turnipseed, Mayor

ATTEST:

Jenny Rakow, Town Clerk

DEVELOPER

EPOCH GCH HOCKETT GULCH HOLDINGS LLC, a
Colorado limited liability company

By: GCH Hockett Gulch, LLC, a Colorado limited
liability company

Its: Manager

By: Sawbuck Investments Inc, a Colorado
corporation

Its: Manager

By: _____

Name: Jonathan Hardy

Title: President

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

Subscribed and sworn to before me this ____ day of _____, 2022, by
Jonathan Hardy as President of Sawbuck Investments Inc., a Colorado corporation, the Manager
of GCH Hockett Gulch, LLC, a Colorado limited liability company, the Manager of Epoch GCH
Hockett Gulch Holdings LLC, a Colorado limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: _____

Notary Public

EXHIBIT A

Legal Description

HISTORIC LEGAL DESCRIPTION:

A TRACT OF LAND DESIGNATED THE "MONTGOMERY TRACT", LOCATED IN TRACTS 49 AND 50 OF SECTIONS 5 AND 6 RESPECTIVELY IN TOWNSHIP 5 SOUTH, RANGE 84 WEST, 6TH PRINCIPAL MERIDIAN IN THE COUNTY OF EAGLE, STATE OF COLORADO. SAID TRACTS 49 AND 50, DESIGNATED UNDER THE INDEPENDENT RESURVEY OF TOWNSHIP 5 SOUTH, RANGE 84 WEST, 6TH PRINCIPAL MERIDIAN APPROVED BY THE SURVEYOR GENERAL'S OFFICE IN DENVER, COLORADO ON JUNE 20, 1922, WERE ORIGINALLY DESCRIBED AS THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER (NW1/4SW1/4) AND THE SOUTH HALF OF THE SOUTHWEST QUARTER (S1/2SW1/4) OF SECTION 5, AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER (NE1/4SE1/4) OF SECTION 6 RESPECTIVELY OF TOWNSHIP 5 SOUTH, RANGE 84 WEST, 6TH PRINCIPAL MERIDIAN, COUNTY OF EAGLE, STATE OF COLORADO, SAID MONTGOMERY TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT CORNER NO. 1, AN IRON PIPE WITH A BRAZED CAP SET IN CONCRETE NEAR A FENCE LINE AND AN IRRIGATION DITCH, CAP IS MARKED "CORNER NO. 1 MONTGOMERY TRACT" FROM WHICH CORNER NO. 1 OF SAID TRACT 49 IN SECTION 5 OF TOWNSHIP 5 SOUTH, RANGE 84 WEST, 6TH PRINCIPAL MERIDIAN BEARS NORTH 47 DEGREES 02 MINUTES 40 SECONDS EAST 586.87 FEET DISTANT; THENCE NORTH 72 DEGREES 59 MINUTES 30 SECONDS WEST 730.29 FEET TO CORNER NO. 2, AN IRON PIPE WITH A BRAZED CAP SET IN CONCRETE NEAR THE SOUTHERLY RIGHT OF WAY FENCE LINE OF U.S. HIGHWAY NO. 6 & 24, AS IT NOW EXISTS, CAP MARKED "CORNER NO. 2 MONTGOMERY TRACT", THENCE SOUTH 84 DEGREES 01 MINUTES 40 SECONDS WEST 937.90 FEET TO CORNER NO. 3, AN IRON PIPE WITH A BRAZED CAP SET IN CONCRETE NEAR A FENCE JUNCTION WITH THE SOUTHERLY RIGHT OF WAY FENCE LINE OF U.S. HIGHWAY NO. 6 & 24, AS IT NOW EXISTS, CAP IS MARKED "CORNER NO. 3 MONTGOMERY TRACT", THENCE SOUTH 40 DEGREES 59 MINUTES 30 SECONDS EAST 807.75 FEET TO CORNER NO. 4, AN IRON PIPE WITH A BRAZED CAP SET IN CONCRETE NEAR A FENCE LINE, CAP IS MARKED "CORNER NO. 4 MONTGOMERY TRACT"; THENCE SOUTH 74 DEGREES 47 MINUTES 20 SECONDS EAST 1527.39 FEET TO CORNER NO. 5, AN IRON PIPE WITH A BRAZED CAP SET IN CONCRETE NEAR THE JUNCTION OF TWO FENCE LINES, CAP IS MARKED "CORNER NO. 5 MONTGOMERY TRACT", THENCE NORTH 02 DEGREES 38 MINUTES 10 SECONDS EAST 597.03 FEET TO CORNER NO. 6, AN IRON PIPE WITH A BRAZED CAP SET IN CONCRETE NEAR A FENCE LINE AND IRRIGATION DITCH, CAP IS MARKED "CORNER NO. 6 MONTGOMERY TRACT"; THENCE NORTH 53 DEGREES 19 MINUTES WEST 498.85 FEET TO CORNER NO. 1, THE PLACE OF BEGINNING, COUNTY OF EAGLE, STATE OF COLORADO.

SURVEYED LEGAL DESCRIPTION:

A TRACT OF LAND DESIGNATED THE MONTGOMERY TRACT LOCATED IN TRACTS 49 AND 50 OF SECTIONS 5 AND 6, TOWNSHIP 5 SOUTH, RANGE 84 WEST OF THE SIXTH PRINCIPAL MERIDIAN IN THE COUNTY OF EAGLE AND STATE OF COLORADO AS DESCRIBED IN THE DEED RECORDED IN BOOK 440 AT PAGE [486](#), ALL BEARINGS SHOWN HEREON BEING BASED ON A BEARING OF N0°33'00"W BETWEEN STREET MONUMENTS FOUND AT 5TH AND BROADWAY AND 2ND AND BROADWAY BOTH BEING 2" BRASS MONUMENTS IN CAST IRON MONUMENT BOXES, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING A CORNER NO. 1 OF THE MONTGOMERY TRACT FROM WHICH A 1-1/2" ALUMINUM CAP WITNESS CORNER, PLS 23089, ON A 5/8" REBAR BEARS N72°59'13"W 60 FEET AND ALSO FROM WHICH CORNER NO. 1 OF TRACT 49, BEING A FOUND 3" ALUMINUM CAP ON ALUMINUM PIPE, PLS NO. 26967 BEARS N47°02'40"E 586.67 FEET; THENCE N72°59'13"W 730.00 FEET TO THE SOUTHERLY RIGHT OF WAY OF U.S. HIGHWAY 6 AND 24, TO A FOUND 2" ALUMINUM CAP ON A NO. 6 REBAR, PLS NO. 23089; THENCE ALONG SAID RIGHT OF WAY THE FOLLOWING FOUR COURSES:

1. 356.57 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 1529.01 FEET, A TANGENT OF 179.01 FEET, A DELTA ANGLE OF 13°21'42", AND A CHORD THAT BEARS S74°36'16"W 355.77 FEET;

2. N8°42'53"W 49.89 FEET;

3. 104.29 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 1479.08 FEET, A TANGENT OF 52.17 FEET, A DELTA ANGLE OF 4°02'24" AND A CHORD THAT BEARS S83°18'19"W 104.27 FEET;

4. S85°19'31"W 481.28 FEET;

THENCE DEPARTING THE RIGHT OF WAY OF U.S. HIGHWAY 6 AND 24 S40°59'23"E 1.63 FEET TO A FOUND BRAZED CAP, STAMPED "MONTGOMERY TRACT"; THENCE S40°59'23"E 808.14 FEET TO A FOUND 2" BRAZED CAP, STAMPED "MONTGOMERY TRACT"; THENCE S74°48'55"E 1526.35 FEET TO A POINT ON THE TRACT LINE BETWEEN CORNER NO. 1 AND CORNER NO. 6 OF TRACT 49, FROM WHICH CORNER NO. 6, A 3" ALUMINUM CAP ON AN ALUMINUM PIPE, PLS NO. 23089 BEARS S02°33'18"W 14.67 FEET; THENCE ALONG THE 6-1 LINE OF TRACT 49 N02°33'18"E 597.31 FEET; THENCE DEPARTING SAID TRACT LINE N53°18'48"W 497.53 FEET TO THE POINT OF BEGINNING.

Major Development Permit

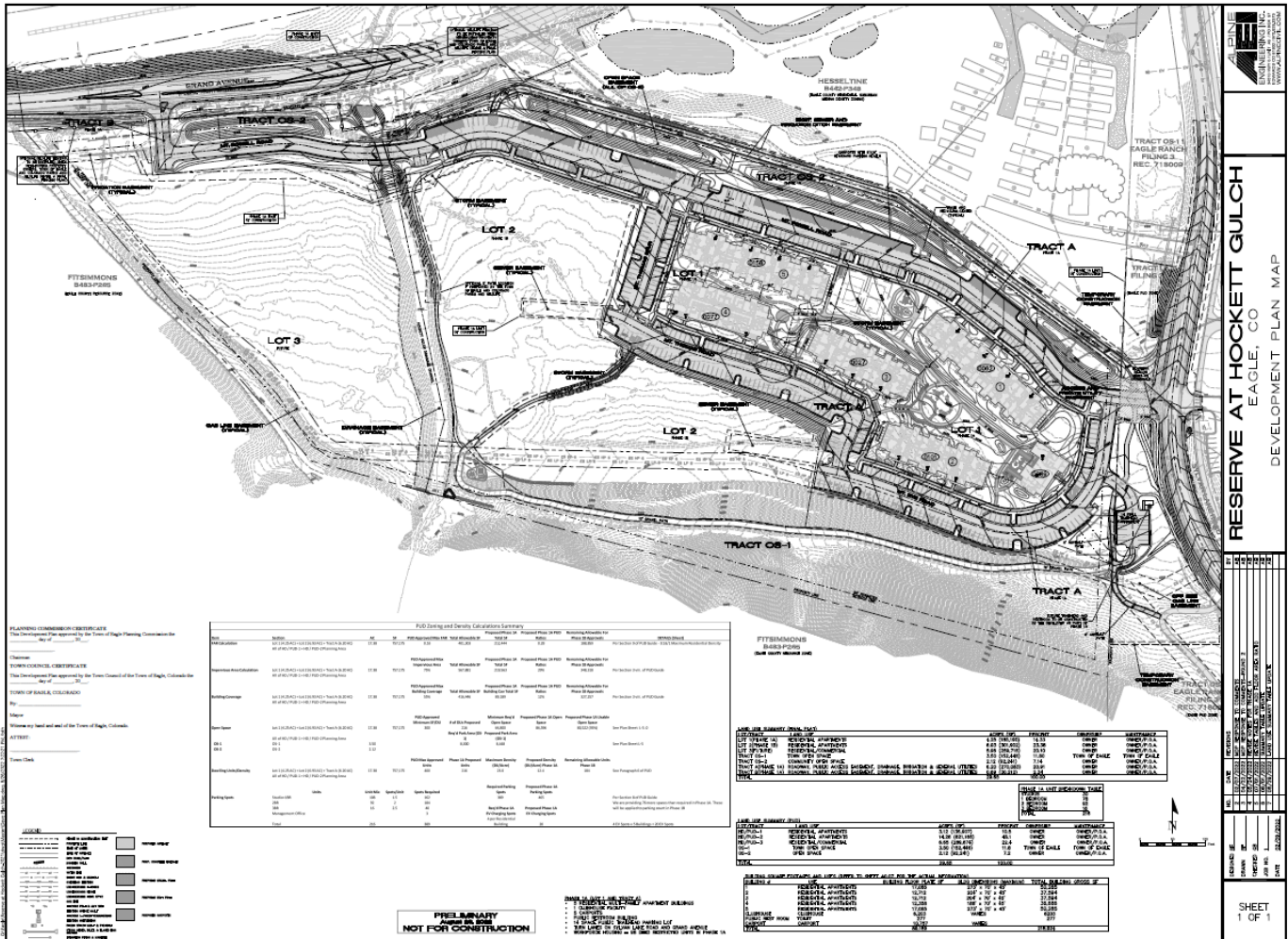


EXHIBIT C

Improvements Phase 1a

Item	Price	Completion Month**	Phased (Y/N) ***
Sylvan Lake Road Widening	\$ 259,600	12	N
Highway 6 Turn Lane	\$ 273,791	12	N
Storm - Pipe/Drain	\$ 537,386	12	N
Storm - Inlets, Vault, Riprap, Culverts	\$ 476,259	12	N
Main Water Lines *	\$ 1,360,978	12	N
Sewer Main Lines	\$ 388,392	12	N
ER OS-1, OS-1, OS-2, the Lawn, the Slope, Aspen Grove, the Spine, Perimeter Walking Loop, Other Site Soil, Basecourse, Grading, Reveg	\$ 314,890	12	Y
Roads, Curb & Gutter, Sidewalks	\$ 1,636,301	24	Y
Storm - Manholes	\$ 53,928	24	Y
Trailhead Parking Lot, Fencing	\$ 76,490	24	N
Trailhead Restroom (Flushless)	\$ 55,825	24	N
Light Poles	\$ 315,000	24	Y
Traffic Control, Erosion & Sediment Control	\$ 131,150	24	Y
Irrigation (not incl. in landscaping bid)	\$ 83,351	24	Y
Landscaping, Sleeving	\$ 670,230	24	Y
Total Improvements	\$ 6,633,570		
Performance Guarantee Amount (110% of total improvements)	\$ 7,296,927		

* Includes 16" DIP

** Developer may request partial releases of the LOC or collateralization. In order to achieve a partial release, the entire line item must be complete, the minimum release amount must be \$500,000 or greater, and the Developer may only request a maximum of four (4) partial releases. The 10% warranty amount will be held back from the partial release for a two year period as described in the Development Agreement.

*** Phased items will be completed during different stages of the development. In order for a building to receive a Certificate of Occupancy (CO), the Phased items adjacent to the particular building must be complete (other than landscaping which must either be completed prior to CO or during the next "landscaping" season if building completion is in the winter months). Buildings that are provided a CO must have appropriate roads, fire & safety access, parking, hydrants and phased Improvements.

Phasing Plan

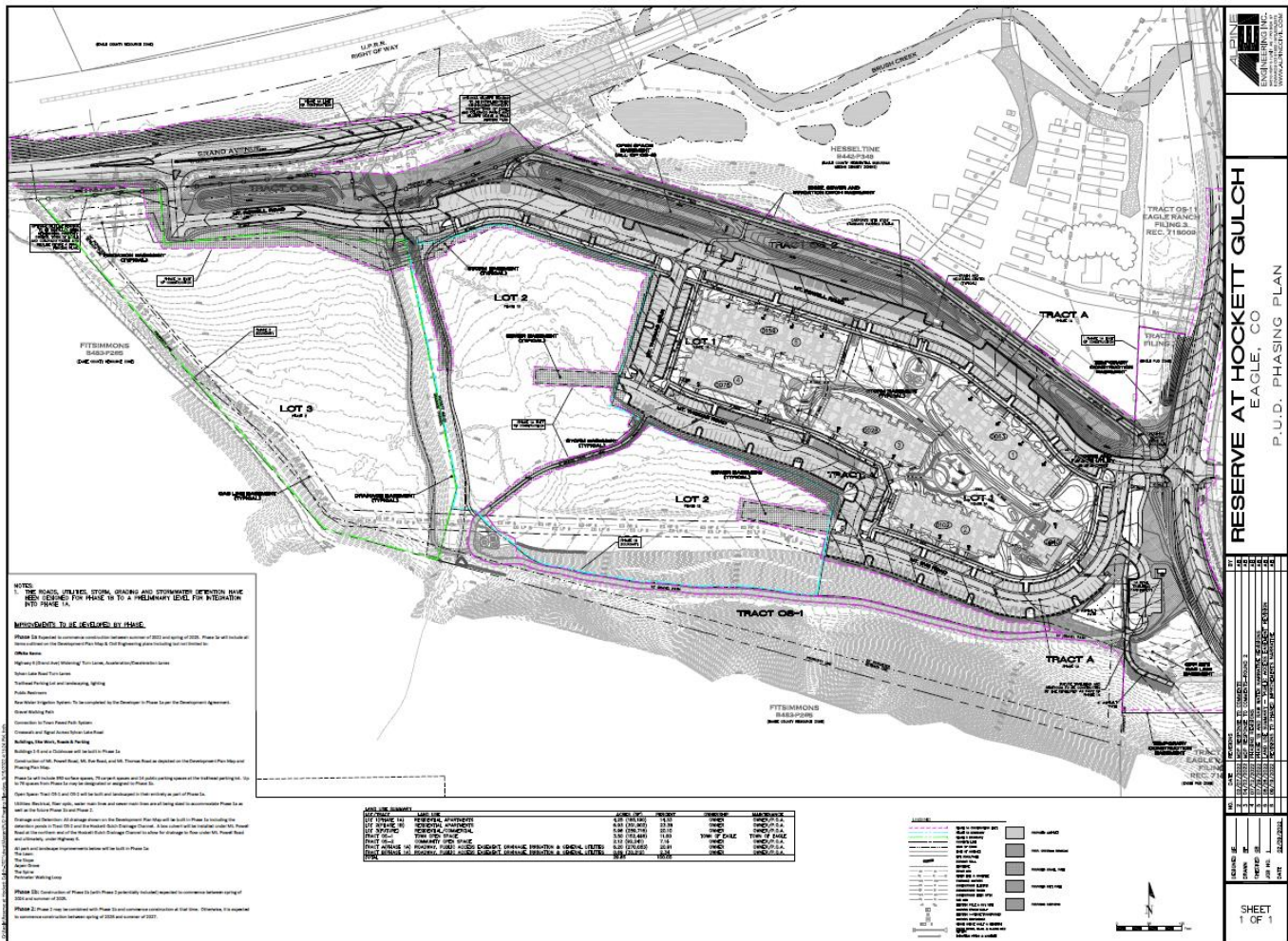


EXHIBIT E

Deed Restriction

DEED RESTRICTION AGREEMENT **(Reserve at Hockett Gulch)**

THIS DEED RESTRICTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20__ (the "Effective Date") by and between the Town of Eagle, Colorado, a Colorado municipal corporation with an address of P.O. Box 609, Eagle, Colorado 81631 (the "Town"); and _____ with an address of _____ ("Developer") (each a "Party" and collectively the "Parties").

WHEREAS, Developer owns the real property described as _____ (the "Property"), which is part of the Reserve at Hockett Gulch development;

WHEREAS, Developer is transferring the Property; and

WHEREAS, the Parties desire to permanently restrict the occupancy and use of the Property.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

a. *Eagle County Business* means a business in Eagle County, Colorado that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business.

b. *Gross Income means* all income received by an individual in a calendar year from any source and prior to deductions or payment or withholding of taxes.

c. *Income Threshold* means a Gross Income that is less than or equal to 100% of the Area Median Income ("AMI") as published annually by the U.S. Department of Housing and Urban Development for Eagle County, Colorado.

d. *Owner* means any person who acquires an ownership interest in the Property.

e. *Principal Place of Residence* means the home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom. In determining what is a Principal Place of Residence, the Town shall consider the criteria set forth in C.R.S. § 31-10-201(3), as amended.

f. *Qualified Occupant* means an individual who meets the Income Threshold, occupies the Property as their Principal Place of Residence, and:

- i. Works or has been hired to work at least 30 hours per week at an Eagle County Business on a permanent basis; or
- ii. Works at least 30 hours per week in Eagle County for a business located outside Eagle County (telecommuting); or
- iii. Is 60 years of age or older and retired, and for the 5 years immediately prior to their retirement, worked at least 30 hours per week at an Eagle County Business; or
- iv. Is disabled, and for the 2 years immediately prior to the onset of their disability, worked at least 30 hours per week at an Eagle County Business.

2. Liability. Each Owner shall be jointly and severally responsible for compliance with this Deed Restriction at all times. This Agreement shall constitute a covenant running with the Property as a burden thereon, for the benefit of and enforceable by the Town. Each and every conveyance of the Property or a portion thereof, or interest therein, for all purposes, shall be deemed to include and incorporate this Agreement by reference, even without specific reference to this Agreement in any document of conveyance.

3. Occupancy Restrictions.

- a. If occupied, the Property shall be occupied by at least one Qualified Occupant.
- b. No business activity shall occur on or in the Property, other than as permitted within the zone district applicable to the Property.
- c. The Property may only be leased to a Qualified Occupant and, if applicable, their immediate family member related by blood, marriage or guardianship. No lease of the Property shall be for less than 180 days. Each lease of the Property shall specifically reference this Agreement and include a copy of this Agreement as an attachment to such lease. Subleasing is not permitted; all leases must be between an Owner and a Qualified Occupant.
- d. No more than 3 individuals unrelated by blood, marriage or legal guardianship may occupy the Property at any time.
- e. No later than February 1st of each year, each Owner shall submit one copy of a sworn affidavit, on a form provided by the Town, verifying that the Property was occupied in accordance with this Agreement during the prior calendar year. Verification shall include, at a minimum, copies of all leases, copies of identification, documents evidencing hours of employment and income, and documents related to residency.

4. Breach.

a. It is a breach of this Agreement for any Owner or Qualified Occupant to violate any provision of this Agreement, or for any other individual to occupy the Property in violation of this Agreement.

b. If the Town has reasonable cause to believe that an Owner or Qualified Occupant is violating this Agreement, the Town may inspect the Property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing at least one Owner with 5 days prior written notice. This Agreement shall constitute permission from all Owners and Qualified Occupants to enter the Property during such times upon such notice.

c. If the Town discovers a violation of this Agreement, the Town shall provide written notice to the Owner of the violation and allow 15 days to cure.

5. Remedies. The Town may pursue all available remedies for violations of this Agreement by an Owner or Qualified Occupant, including without limitation specific performance or a mandatory injunction requiring compliance, and the exercise of one remedy shall not preclude the exercise of any other remedy. The costs to the Town of any action taken in response to any violation of this Agreement, including reasonable attorney fees, shall be paid by Owner(s) within 30 days of the date of an invoice specifying the same, sent to the last known address of at least one Owner by first-class U.S. mail. If such costs are not timely paid, the Town may certify the costs, plus an administrative fee of 15%, to the Eagle County Clerk and Recorder to be collected with all other taxes and assessments on the Property.

6. Priority; Foreclosure. This Agreement shall be a first and prior lien on the Property at all times. Notwithstanding any other provision of this Agreement, in the event of a foreclosure on the Property or any portion thereof, acceptance of a deed-in-lieu of foreclosure on the Property or any portion thereof, or assignment in lieu of foreclosure on the Property, this Agreement shall remain in full force and effect.

7. Miscellaneous.

a. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Eagle County, Colorado.

b. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

c. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

d. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

e. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

f. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

h. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties hereunder shall be assigned by either Party without the written consent of the other.

i. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

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

k. *Recordation.* This Agreement shall be recorded in the real estate records of the Eagle County Clerk and Recorder and shall run with the Property.

l. *No Joint Venture.* Neither this Agreement nor any course of conduct or course of performance hereunder shall be construed to constitute or create a joint venture, partnership, or any other similar arrangement between the Parties.

m. *Savings Clause.* If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement are held to be unlawful or void for violation of: the rule against perpetuities or some analogous statutory provision; the rule restricting restraints on alienation; or any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated members of the Eagle Board of Trustees, their now living descendants, if any, and the survivor of them, plus 21 years.

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

TOWN OF EAGLE, COLORADO

Mayor

ATTEST:

Town Clerk

DEVELOPER

STATE OF COLORADO)
)ss.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20__, by
_____ as _____ of _____.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

Notary Public

EXHIBIT F

Rental Restriction

RENTAL RESTRICTION AGREEMENT **(Reserve at Hockett Gulch)**

THIS RENTAL RESTRICTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20__ (the "Effective Date") by and between the Town of Eagle, Colorado, a Colorado municipal corporation with an address of P.O. Box 609, Eagle, Colorado 81631 (the "Town"); and _____ with an address of _____ ("Owner") (each a "Party" and collectively the "Parties").

WHEREAS, Owner owns the real property described as _____ (the "Property"), which is part of the Reserve at Hockett Gulch development;

WHEREAS, the Property consists of or will consist of rental dwelling units (each a "Unit" and collectively the "Units");

WHEREAS, the Parties desire to permanently restrict the occupancy and use of the Property.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

a. *Eagle County Business* means a business in Eagle County, Colorado that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business.

b. *Gross Income means* all income received by an individual in a calendar year from any source and prior to deductions or payment or withholding of taxes.

c. *Principal Place of Residence* means the home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom. In determining what is a Principal Place of Residence, the Town shall consider the criteria set forth in C.R.S. § 31-10-201(3), as amended.

d. *Qualified Occupant* means an individual who occupies the Property as their Principal Place of Residence and:

i. Works or has been hired to work at least 30 hours per week at an Eagle County Business on a permanent basis; or

- ii. Works at least 30 hours per week in Eagle County for a business located outside Eagle County (telecommuting); or
- iii. Is 60 years of age or older and retired, and for the 5 years immediately prior to their retirement, worked at least 30 hours per week at an Eagle County Business; or
- iv. Is disabled and for the 2 years immediately prior to the onset of their disability, worked at least 30 hours per week at an Eagle County Business.

2. Liability. Owner shall be responsible for compliance with this Agreement at all times. This Agreement shall constitute a covenant running with the Property as a burden thereon, for the benefit of and enforceable by the Town. Each and every conveyance of the Property or a portion thereof, or interest therein, for all purposes, shall be deemed to include and incorporate this Agreement by reference, even without specific reference to this Agreement in any document of conveyance.

3. Occupancy Restrictions.

a. No Unit shall be leased or occupied without a written lease (each a "Lease"). Each Unit shall have only one Lease at any one time. Each Restricted Unit Lease shall include a clear reference to this Agreement, a brief summary of this Agreement and a copy of this Agreement. The Qualified Occupant shall be a signatory on the Lease of all Restricted Units. No Lease of the Units shall be for less than 30 days. Subleasing of Restricted Units is not permitted.

b. At least 45% of the total number of Units that have received a certificate of occupancy shall be leased to at least one Qualified Occupant at all times, and these Units shall constitute the "Restricted Units". The Restricted Units may only be leased to a Qualified Occupant and, if applicable, their immediate family members related by blood, marriage or guardianship.

c. At any time that the number of Restricted Units falls below 45% of the total number of Units, Owner shall promptly take commercially reasonable efforts to lease the next Units coming available for rent to a Qualified Occupant in accordance with this Agreement, until at least 45% of the total Units are Restricted Units.

d. No business activity shall occur on or in the Property, other than as permitted within the zone district applicable to the Property.

e. No more than 3 individuals unrelated by blood, marriage or legal guardianship may occupy a Unit at any time.

f. In evaluating an application to lease a Restricted Unit, Owner shall be guided by the following:

- i. An applicant's physical place of employment is controlling, not the mailing address of such place.

ii. Claims of employment that are unable to be verified by Owner will not be utilized in determining an applicant's eligibility.

iii. To the extent permitted by law, priority for the leasing of a Restricted Unit shall be given to the following Qualified Occupants: employees of businesses located in the Town of Eagle, including the Town of Eagle government; employees of the Greater Eagle Fire Protection District; employees of the Eagle County Health Services District; employees of the Eagle County School District; and employees of businesses located within the Town of Eagle.

iv. Any misrepresentation by an applicant in any submittal shall disqualify such applicant from being eligible to lease a Restricted Unit, and shall be grounds for eviction if such misrepresentation is revealed after such applicant's occupancy.

g. No later than February 1st of each year, Owner shall submit a sworn affidavit, on a form provided by the Town, verifying that the Property was occupied in accordance with this Agreement during the prior calendar year. Verification shall include, at a minimum, copies of all Leases for all leased Units, copies of identification from all tenants in Restricted Units, documents evidencing hours of employment of all Qualified Occupants, and documents related to residency of all Qualified Occupants.

4. Inspection of Documents. The Town may inspect any documents submitted with any application to lease a Restricted Unit, at any time during normal business hours, upon reasonable notice. Upon inspection, if the Town reasonably determines that additional documents are necessary to verify Qualified Occupant status, the Town may request additional documents. Owner shall not be required to retain any documents submitted by applicants who do not sign leases; provided, however, that if the number of Restricted Units falls below 45% of the total Units, then Owner shall retain documents submitted by all applicants to verify Owner's commercially reasonable efforts to lease the next Unit becoming available for rent to a Qualified Occupant in accordance with the requirements of this Agreement, until at least 45% of the total Units are once again Restricted Units.

5. Breach.

a. It is a breach of this Agreement for Owner to violate any provision of this Agreement, or for any other individual to occupy a Unit in violation of this Agreement.

b. If the Town has reasonable cause to believe that Owner is violating this Agreement, the Town may inspect the Property and any of the Units between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing Owner and the occupants of any affected Unit with 5 days' prior written notice. This Agreement shall constitute permission from Owner and all occupants of all Units to enter all Units during such times upon such notice.

c. If the Town discovers a violation of this Agreement, the Town shall notify Owner of the violation and allow 15 days to cure.

6. Remedies. The Town may pursue all available remedies for violations of this Agreement by Owner, including without limitation specific performance or a mandatory injunction requiring compliance, and the exercise of one remedy shall not preclude the exercise of any other remedy. The costs to the Town of any action taken in response to any violation of this Agreement, including reasonable attorney fees, shall be paid by Owner within 30 days of the date of an invoice specifying the same, sent to the last known address of Owner by first-class U.S. mail. If such costs are not timely paid, the Town may certify the costs, plus an administrative fee of 15%, to the Eagle County Clerk and Recorder to be collected with all other taxes and assessments on the Property.

7. Priority; Foreclosure. This Agreement shall be a first and prior lien on the Property at all times. Notwithstanding any other provision of this Agreement, in the event of a foreclosure on the Property or any portion thereof, acceptance of a deed-in-lieu of foreclosure on the Property or any portion thereof, or assignment in lieu of foreclosure on the Property, this Agreement shall remain in full force and effect.

8. Miscellaneous.

a. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Eagle County, Colorado.

b. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

c. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

d. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

e. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

f. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

h. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties hereunder shall be assigned by either Party without the written consent of the other.

i. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary

limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

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

k. *Recordation.* This Agreement shall be recorded in the real estate records of the Eagle County Clerk and Recorder and shall run with the Property.

l. *No Joint Venture.* Neither this Agreement nor any course of conduct or course of performance hereunder shall be construed to constitute or create a joint venture, partnership, or any other similar arrangement between the Parties.

m. *Savings Clause.* If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Agreement are held to be unlawful or void for violation of: the rule against perpetuities or some analogous statutory provision; the rule restricting restraints on alienation; or any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated members of the Eagle Board of Trustees, their now living descendants, if any, and the survivor of them, plus 21 years.

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

TOWN OF EAGLE, COLORADO

Mayor

ATTEST:

Town Clerk

OWNER

STATE OF COLORADO)
)ss.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20__, by
_____ as _____ of _____.

My commission expires:

Notary Public

TOWN OF EAGLE, COLORADO
RESOLUTION NO. 76
(Series of 2022)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO
APPROVING A MAJOR DEVELOPMENT PERMIT, PRELIMINARY PLAN, FINAL PLAT,
AND ASSOCIATED DEVELOPMENT AGREEMENT FOR PORTION OF RESERVE AT
HOCKETT GULCH

WHEREAS, Epoch GCH Hockett Gulch Holdings, LLC (the "Developer") owns the real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, the Developer has filed with the Town an application for approval of a Major Development Permit to construct 216 multi-family dwelling units and a clubhouse on the Property (the "MDP Application");

WHEREAS, the Developer has also filed with the Town an application for approval of a Preliminary Plan and Final Plat to subdivide 29.65 acres into 3 lots and 2 open space tracts (collectively the "Final Plat Application");

WHEREAS, at a properly-noticed public hearing on June 7, 2022, the Planning and Zoning Commission reviewed the MDP Application and the Final Plat Application, heard comments from the Developer, Town staff and the public, and recommended that the Town Council approve both the MDP Application and the Final Plat Application with conditions; and

WHEREAS, at a properly-noticed public hearing on September 13, 2022, the Town Council reviewed the MDP Application and the Final Plat Application and heard comments from the Developer, Town staff and the public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO, AS FOLLOWS:

Section 1. Findings.

a. Based on the recommendation of the Planning and Zoning Commission, input from Town staff and any public comment received, the Town Council finds that the MDP Application complies with the applicable criteria in Chapters 4.06, 4.07, and 4.13 of the Eagle Municipal Code (the "Code") and the approved Planned Unit Development.

b. Based on the recommendation of the Planning and Zoning Commission, input from Town staff and any public comment received, the Town Council finds that the Final Plat Application complies with the applicable criteria in Chapter 4.13 of the Code and the approved Planned Unit Development.

Section 2. Decision.

a. Based on the foregoing findings, the Town Council approves the MDP Application subject to the following condition: within 30 days of the adoption of this Resolution, the Developer shall make technical and redline corrections to the MDP Application documents as identified by Town staff.

b. Based on the foregoing findings, the Town Council approves the Final Plat Application subject to the following condition: within 30 days of the adoption of this Resolution, the Developer shall make technical and redline corrections to the MDP Application documents as identified by Town staff.

Section 3. Development Agreement. The Development Agreement is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Development Agreement on behalf of the Town.

INTRODUCED, READ, PASSED AND ADOPTED ON SEPTEMBER 20, 2022.

TOWN OF EAGLE, COLORADO

Scott Turnipseed, Mayor

ATTEST:

Jenny Rakow, Town Clerk