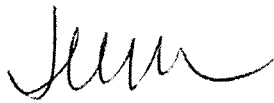


PROOF OF PUBLICATION

STATE OF COLORADO)
)
COUNTY OF EAGLE)

I, Jenny Rakow, Town Clerk for the Town of Eagle, do solemnly swear and affirm that I published in full a true and correct copy of TOWN OF EAGLE, COLORADO ORDINANCE NO. 04 (Series of 2021) "AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO ANNEXING TO THE TOWN CERTAIN UNINCORPORATED TERRITORY LOCATED IN EAGLE COUNTY, ZONING THE PROPERTY RESIDENTIAL MEDIUM AND APPROVING THE ASSOCIATED ANNEXATION AGREEMENT" on the Town of Eagle's web site, www.townofeagle.org, on the 4th day of May, 2021.

Witness my hand and seal this 4th day of May 2021.



Jenny Rakow
Town Clerk



Ordinance Effective Date:
May 14, 2021

**TOWN OF EAGLE, COLORADO
ORDINANCE NO. 4
(Series of 2021)**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO ANNEXING TO THE TOWN CERTAIN UNINCORPORATED TERRITORY LOCATED IN EAGLE COUNTY, ZONING THE PROPERTY RESIDENTIAL MEDIUM AND APPROVING THE ASSOCIATED ANNEXATION AGREEMENT (POWELL PARK SUBDIVISION)

WHEREAS, William and Nancy Powell ("Applicants") are the owners of the real property in unincorporated Eagle County described in the attached **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, on December 18, 2020, Applicants filed a petition for annexation of the Property to the Town;

WHEREAS, by resolution adopted on January 26, 2021, the Town Council found the petition to be in substantial compliance with C.R.S. § 31-12-107(1);

WHEREAS, on April 27, 2021, the Town Council conducted a properly-noticed public hearing and determined that the Property is eligible for annexation to the Town;

WHEREAS, also on April 27, 2021, the Town Council conducted a properly-noticed public hearing on the proposed zoning of the Property as Residential Medium ("RM");

WHEREAS, also on April 27, 2021, the Town Council considered the associated Annexation Agreement; and

WHEREAS, the Town Council finds that it is desirable and necessary, and in the best interest of the public health, safety and welfare, that the Property be annexed to the Town, that the Property be zoned RM and that the Annexation Agreement be approved.

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

Section 1. Annexation.

a. The Property is hereby annexed to the Town. Upon the effective date of this Ordinance, the Property shall become subject to the jurisdiction of the Town.

b. Prior to the effective date of this Ordinance, the Town Clerk shall file for recording three certified copies of this Ordinance and three copies of the Annexation Map with the Eagle County Clerk and Recorder, and shall keep one copy of the Annexation Map and the original of this Ordinance in the Town Clerk's office.

c. The Town Clerk shall request that the Eagle County Clerk and Recorder file one certified copy of this Ordinance and one copy of the Annexation Map with the Division of Local Government of the Department of Local Affairs and the same with the Colorado Department of Revenue.

Section 2. Annexation Agreement. The Annexation 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 Annexation Agreement on behalf of the Town.

Section 3. Zoning.

a. The Town Council hereby finds and determines that the RM zoning satisfies all applicable criteria in the Eagle Municipal Code.

b. Based on the foregoing, upon the effective date of this Ordinance, the Property is zoned RM.

Section 4. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 5. Safety. This Ordinance is deemed necessary for the protection of the public health, safety and welfare.

Section 6. Effective Date. Pursuant to Section 6.03 of the Eagle Home Rule Charter, this Ordinance shall take effect 10 days after publication following adoption.

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED ON APRIL 27, 2021.

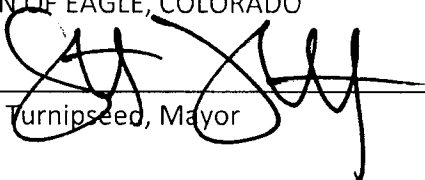
ATTEST:



Jenny Rakow, Town Clerk



TOWN OF EAGLE, COLORADO



Scott Turnipseed, Mayor

EXHIBIT A
Legal Description of Property

Lots 1 and 2, Powell Park, according to the plat recorded October 20, 1983 in Book 371 at Page 287, County of Eagle, State of Colorado.

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (the "Agreement") is made and entered into this 27th day of April, 2021 (the "Effective Date"), by and between THE POWELL FAMILY TRUST DATED JULY 5, 2019, a Colorado trust with a legal address of P.O. Box 1227, Eagle, Colorado 81631 ("Petitioner"), and the TOWN OF EAGLE, COLORADO, a Colorado municipality with a legal address of 200 Broadway, Eagle, Colorado 81631 (the "Town") (each a "Party" and collectively the "Parties").

WHEREAS, Petitioner has filed a petition with the Town, pursuant to C.R.S. § 31-12-107(1), for annexation to the Town of the unincorporated lands more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Petitioner is the owner of 100% of the Property, excluding public rights-of-way;

WHEREAS, Petitioner desires to have the Property annexed into the Town to obtain from the Town such municipal services as the Town may now or in the future extend, including without limitation those described herein; and

WHEREAS, the Town has determined that it is in its best interest to annex the Property, to provide municipal services thereto, and to receive revenues from the Property upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises and agreements of each of the Parties hereto to be kept and performed by each of them, the Parties agree as follows:

1. **Annexation.** The annexation of the Property shall be in accordance with the Colorado Municipal Annexation Act of 1965, C.R.S. § 31-12-101, *et seq.*, as amended.
2. **Purpose.** The purpose of this Agreement is to set forth the terms, conditions, and fees to be paid by Petitioner upon annexation and development of the Property. Unless otherwise expressly provided to the contrary herein, all conditions contained herein are in addition to any and all requirements contained in the Eagle Municipal Code (the "Code") as currently in effect or as hereinafter amended, and any and all applicable state statutes.
3. **Zoning.** Petitioner hereby consents to the zoning of the Property as Residential Medium (RM). Petitioner is entering into this Agreement and are undertaking the obligations imposed upon Petitioner herein in reliance upon the Town's concurrent adoption of an ordinance annexing the Property into the Town and an ordinance zoning the Property as provided in this Paragraph. Performance of Petitioner's obligations hereunder is expressly conditioned upon the Town's adoption of the ordinances described in this Paragraph. If the Town fails to adopt the ordinances described in this Paragraph, then the petition for annexation will be deemed withdrawn and the annexation process will be terminated.

4. Subdivision. No subdivision is proposed or required at the time of Petitioner's application. Any application to subdivide the Property shall comply with any and all applicable provisions of the Code and any plans in place at the time that Petitioner submits its subdivision application. Prior to any development of the Property and upon an application to subdivide the property, Petitioner agrees to execute a subdivision agreement, development agreement or development addressing the installation of and security for all required public improvements for the Property in accordance with § 4.13.240 of the Code, as amended.

5. Water Service and Water Rights.

a. Water service to the Property for treated water uses other than outdoor irrigation and water features shall be provided by the Town, provided that upon annexation, Petitioner connects to the Town's water utility in accordance with Chapter 12.16 of the Code, and that Petitioner makes the required payment in lieu of dedication of water rights for such treated water service, as calculated in this paragraph. The payment in lieu of water rights dedication for the treated water service is \$7,000 per EQR. Petitioner shall pay the applicable plant investment fee and payment in lieu of water rights dedication fee calculated at the time that Petitioner applies for a building permit to develop the Property, or calculated 24 months from the Effective Date of the Annexation Agreement, whichever occurs first.

b. Pursuant to § 12.26.030 of the Code, Petitioner shall dedicate water rights associated with the Property and described in **Exhibit B**. The Town will lease back said water rights pursuant to a long-term leaseback agreement between the Petitioner and the Town. A copy of the leaseback agreement between Petitioner and the Town is attached hereto as **Exhibit C** and incorporated herein by this reference. The water rights will be used for outdoor irrigation of the Property and decreed outdoor uses on the Property, and will not be used for indoor uses. Petitioner shall abandon the Rochford Well as provided in **Exhibit B**.

6. Dedications.

a. Petitioner shall dedicate a public access easement between the Property and the portion of the County's Fairground lands that adjoins the Property consisting of approximately 1.5 acres and extending up to the high water mark of the Eagle River, as set forth in **Exhibit D**, attached hereto and incorporated herein by this reference (the "Public Access Easement"). The Public Access Easement shall be dedicated at the time of application for a building permit for the Property, application for a demolition permit for any existing structures on the Property, application for a final plat for the Property, or within 1 year of the Effective Date, whichever occurs first. If Petitioner files an application for a final plat, Petitioner shall include the Public Access Easement on the plat, and otherwise, Petitioner shall grant the Public Access Easement to the Town by separate agreement.

b. At the time of final plat, Petitioner shall dedicate to Eagle County an easement to allow Violet Lane to be 50 feet in width, in a location to be determined by Eagle County in consultation with Petitioner, considering the location of fencing, slope implications and any necessary utility relocation. Petitioner shall have no responsibility for any costs associated with any improvements in such easement.

7. **No Build Zone.** Petitioner hereby agrees that a portion the Property, consisting of the eastern portion of Lot 2, shall be restricted from commercial and residential development (the "No Build Zone"), as further set forth in **Exhibit D**. The No Build Zone shall be established at the time of application for a building permit for the Property, application for a demolition permit for any existing structures on the Property, application for a final plat for the Property, or within 1 year of the Effective Date, whichever occurs first. If Petitioner files an application for a final plat, Petitioner shall include the No Build Zone on the plat, and otherwise, Petitioner shall establish the No Build Zone by separate agreement with the Town.

8. **Town Fees.** The Parties entered into a Reimbursement Agreement on June 11, 2020, attached hereto as **Exhibit E** and incorporated herein by this reference. Petitioner hereby agrees to fully comply with the terms of the Reimbursement Agreement and make any and all payments required therein. Upon development of the Property, Petitioner shall make any and all required payment of fees to the Town, including public safety impact fees and street impact fees.

9. **Waiver of Prior Vested Rights.** Petitioner waives any prior vested property rights acquired in Eagle County so long as the Property remains annexed into the Town.

10. **Recordation.** This Agreement shall be recorded with the Clerk and Recorder of Eagle County, Colorado, and shall run with the land, and shall be binding upon and shall inure to the benefit of the heirs, successors and permitted assigns of the Parties.

11. **Cure of Legal Defects.** In the event the annexation or zoning of the Property or any portion of this Agreement is declared void or unenforceable by final court action, the Parties shall cooperate to cure any legal defects cited by the court, and immediately upon such cure, the Town shall recommence proceedings to annex the Property, subject to the terms of this Agreement.

12. **Remedies.** The sole and exclusive remedy of Petitioner against the Town for any breach of this Agreement shall be limited to filing a petition for disconnection with the Town. The Town's remedies under this Agreement 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 security given for the completion of the public improvements be paid or honored; or
- d. Any other remedy available at law.

13. **Authority of the Town.** Nothing in this Agreement shall constitute a waiver or abrogation of the Town's legislative, governmental or police powers to promote and protect the health, safety and general welfare of the Town or its inhabitants.

14. Miscellaneous.

a. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent prepaid, first-class United States Mail to the Party at the address set forth on the first page of this Agreement.

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. Severability. If any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal, invalid or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid, and the Parties shall cooperate to cure any such defect.

f. Governing Law and Venue. Colorado law shall govern the validity, performance and enforcement of this Agreement. Should any Party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Eagle County, Colorado.

g. Modification. This Agreement may be modified only by written agreement between the Parties.

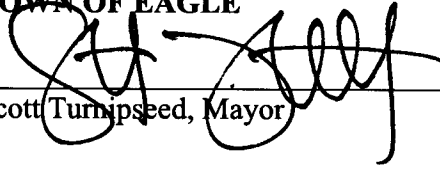
h. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

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 or 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.

k. 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.

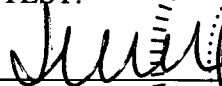
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF EAGLE



Scott Turnpseed, Mayor

ATTEST:



Jenny Rakow, Town Clerk



**THE POWELL FAMILY TRUST
DATED JULY 5, 2019**

By: _____
William P. Powell

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this _____ day of _____, 2021, by William P. Powell, as Trustee of the Powell Family Trust.

My commission expires: _____

(S E A L)

Notary Public

By: _____
Nancy N. Powell

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this _____ day of _____, 2021, by Nancy N. Powell, as Trustee of the Powell Family Trust.

My commission expires: _____

(S E A L)

Notary Public

EXHIBIT A
Legal Description of Property

Lots 1 and 2, Powell Park, according to the plat recorded October 20, 1983 in Book 371 at Page 287, County of Eagle, State of Colorado.

Exhibit B

List of Water Rights
Powell Park

Name of Structure	Amount CFS	Adjudication Date	Appropriation Date	Uses	Case No.
Rochford Well	0.026	6/27/1973	12/31/1968	Domestic, fire protection	W-1927
Rochford No. 1 Spring	0.022	6/27/1973	12/31/1968	Domestic, Fire protection irrigation, fish propagation, livestock	W-1926
Rochford No. 2 Spring	0.38	6/27/1973	12/31/1968	Domestic, Fire protection irrigation, fish propagation, livestock	W-1926
Rochford No. 3 Spring	0.44	6/27/1973	12/31/1968	Domestic, Fire protection irrigation, fish propagation, livestock	W-1926
Rochford No. 4 Spring	3	June, 1950	10/1/2002	storage, irrigation, aesthetic, piscatorial wildlife propagation, recreation	95CW104
Rochford No. 5 Spring	1	June, 1950	10/1/2002	storage, irrigation, aesthetic, piscatorial, wildlife propagation, recreation	95CW104
Total CFS	4.868				
Rochford Pond	1.2 AF	6/27/1973	8/31/1968	water augmentation	W-209

NO.	DATE	REVISION

Inter-Mountain
Civil Engineers & Surveyors

FOR THE YEAR 2008 THE PROFESSIONAL SEAL OF THE ENGINEER IS REQUIRED FOR ALL PLANS AND SPECIFICATIONS FOR THE YEAR 2008 THE PROFESSIONAL SEAL OF THE ENGINEER IS REQUIRED FOR ALL PLANS AND SPECIFICATIONS

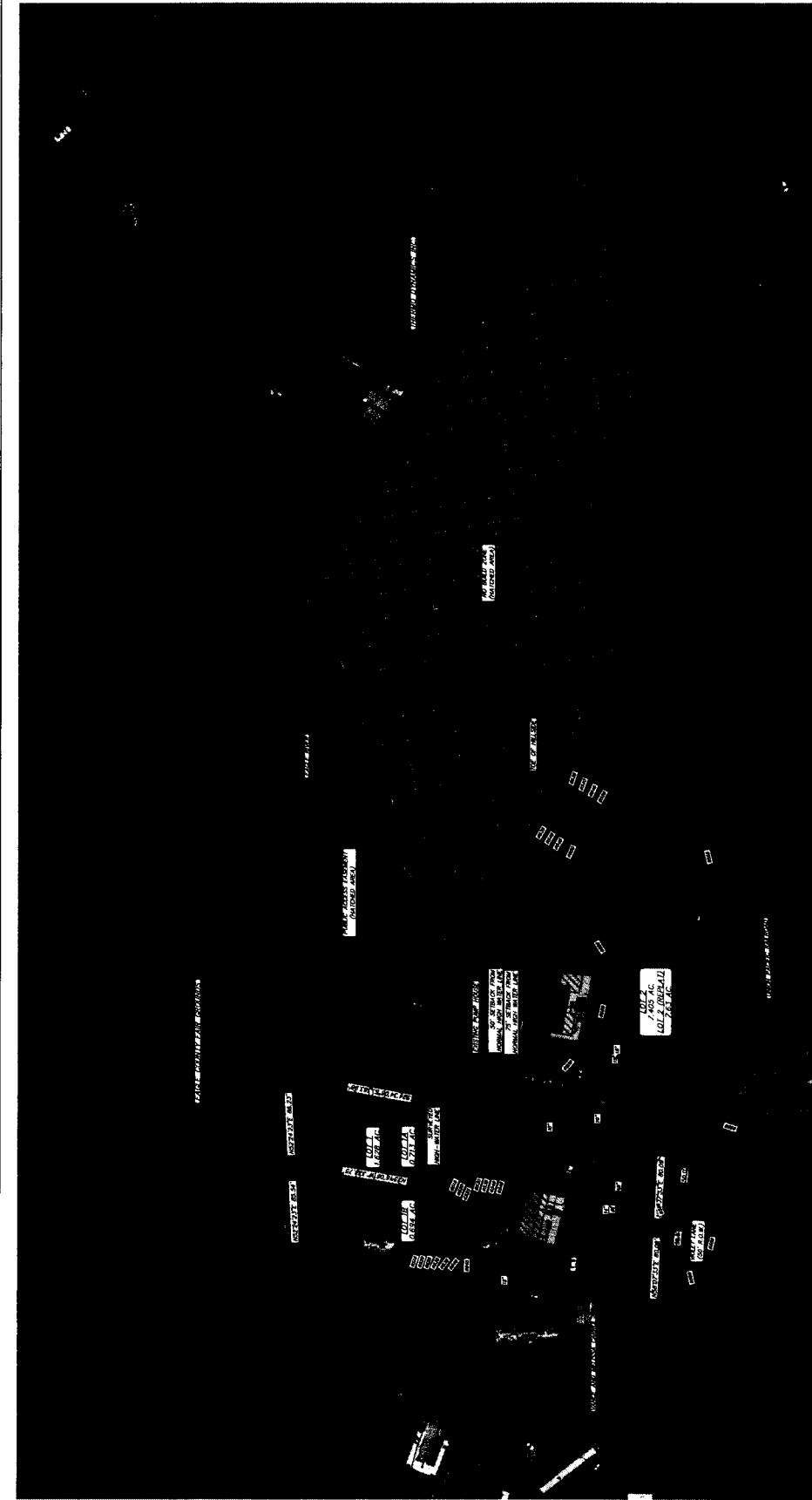
THE POWELL FAMILY TRUST

The documents are prepared by the engineer and the client and the client is responsible for the accuracy of the information provided. The engineer is not responsible for the accuracy of the information provided by the client. The engineer is not responsible for the accuracy of the information provided by the client.

EXHIBIT C

LOTS 1 AND 2
 POWELL PARK
 TOWN OF EAGLE, EAGLE COUNTY, COLORADO

PROJECT NO.	19-0000
DATE	3-18-11
SCALE	1"=50'
BY	
CHECKED BY	



POWELL PARK SITE PLAN
 LOTS 1 AND 2, POWELL PARK

- NOTES**
1. Dimensions are based on the site boundaries shown herein.
 2. Existing paving is R-10.
 3. Proposed paving will be finished medium density, with maximum 1/4" coverage and minimum stability (weight per the municipal code).
 4. The station numbers from the top of each segment are indicated, and are 100'

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT ("Agreement") is entered into on this 10th day of June, 2020 (the "Effective Date") by and between the Town of Eagle, a Colorado municipality with an address of 200 Broadway, Eagle, CO 81631 (the "Town"), and William Powell and Nancy Powell, individuals with an address of P.O. Box 1227, Eagle, CO 81631 (the "Powells") (each a "Party" and collectively the "Parties").

WHEREAS, the Powells are the owners of real property in unincorporated Eagle County more particularly described on **Exhibit A**, attached hereto and incorporated by this reference (the "Property");

WHEREAS, the Powells plan to submit to the Town an application to annex the Property into the Town (the "Application");

WHEREAS, the Parties acknowledge that the land use filing fees provided pursuant to, without limitation, Section 4.03.080(A) of the Eagle Municipal Code (the "Code"), do not adequately cover the Town's expenses incurred during the annexation application process and that the Town will continue to incur expenses until final completion of the Application; and

WHEREAS, the Powells wish to reimburse the Town for its additional expenses incurred processing the Application pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and sufficient consideration, the Parties agree as follows:

1. **Application Process.** The Application will be processed by the Town pursuant to the applicable provisions of the Code, and other applicable law.

2. **Reimbursement.** The Powells hereby agree to reimburse the Town for any and all additional expenses and fees incurred by the Town in reviewing and processing the Application as follows:

a. **Deposit.** The Parties hereby acknowledge and agree that review of the Application may require the Town to incur certain necessary costs, defined as "Pass Through Fees" in Section 4.03.080(B) of the Code, including without limitation costs for third-party consultants engaged by the Town, the Town Attorney, the Town's water counsel and engineer, and staff time for planning, engineering, and public works. Upon execution of this Agreement, the Powells agree to deposit the sum of \$3,350.00, as a deposit (the "Deposit") for Pass Through Fees related to reviewing and processing the Application.

b. **Costs Exceeding Deposit.** If the Town incurs any costs exceeding the Deposit, the Powells shall pay such additional costs or make a subsequent deposit after a meeting between the Powells and the Town to review anticipated costs.

c. **Payment in Full.**

i. All invoiced Pass Through Fees shall be paid in full to the Town within 10 days of the date of the invoice. Failure by the Powells to pay any invoice within the specified time shall be cause for the Town to refrain from approving the Application until the Pass Through Fees are paid in full.

ii. If the Pass Through Fees are not paid when due, the past due amounts shall be a lien on the Property, and the Town Treasurer may certify the amount of the same to the County Treasurer to be placed on the tax list for the current year and to be collected in the same manner as other taxes are collected.

d. **Remaining Deposit.** After the signing of any ordinance approving the Application, any remaining Deposit shall be returned to the Powells within 30 days.

4. **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 and any attached exhibits constitute the entire Agreement between the Powells and the Town, 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 prepaid, first-class United States 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 shall be assigned by either Party without the written consent of the other.


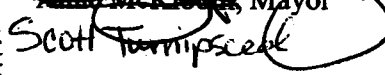
i. **Governmental Immunity.** The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado

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 Appropriations. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of the Town not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the Town hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

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

TOWN OF EAGLE, COLORADO


Anna McKibben, Mayor

Scott Tompsett

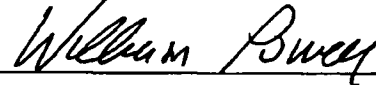


ATTEST:



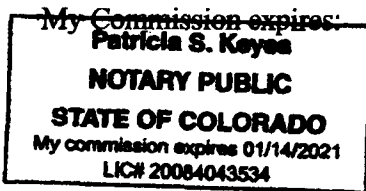
Jenny Rakow, Town Clerk

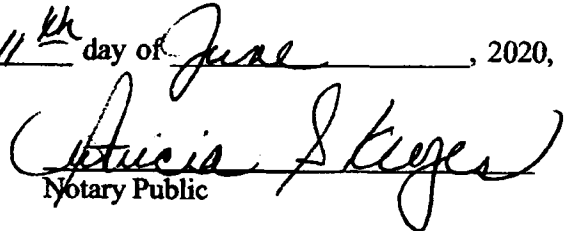
WILLIAM POWELL


William Powell

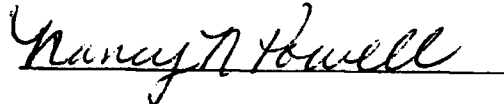
STATE OF COLORADO)
COUNTY OF Eagle) ss.

Subscribed and sworn to before me this 11th day of June, 2020, by William Powell.



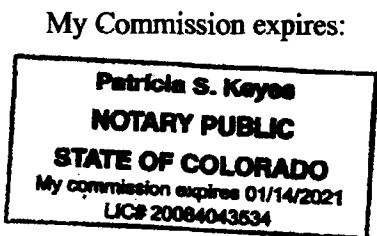

Notary Public

NANCY POWELL


Nancy Powell

STATE OF COLORADO)
COUNTY OF Eagle) ss.

Subscribed and sworn to before me this 11th day of June, 2020, by Nancy Powell.



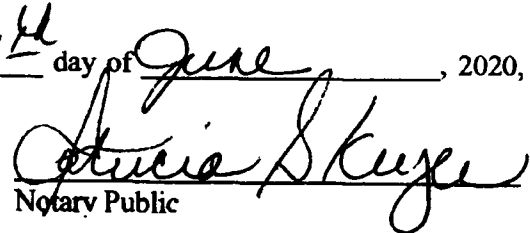

Notary Public

EXHIBIT A
Legal Description of Property

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