

**TOWN OF EAGLE, COLORADO
ORDINANCE NO. 05
(Series of 2022)**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO, REZONING THE PROPERTY LOCATED AT 747 EAST 3RD STREET, EAGLE, COLORADO FROM PUBLIC AREA (PA) TO RESIDENTIAL MEDIUM DENSITY (RM), AND APPROVING THE ASSOCIATED DEVELOPMENT AGREEMENT

WHEREAS, Eagle County Schools is the owner of certain real property located at 747 East 3rd Street, Eagle, Colorado and more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, on September 3, 2021, Tom Braun, on behalf of Eagle County Schools (the "Applicant"), submitted an application to rezone the Property from Public Area (PA) to Residential Medium Density (RM);

WHEREAS, on November 2, 2021, the Planning and Zoning Commission held a properly-noticed public hearing on the Application and recommended that the Town Council approve the Application with conditions;

WHEREAS, on December 14, 2021 and January 25, 2022, the Town Council held a properly-noticed public hearing on the Application; and

WHEREAS, the Town Council, upon reviewing the recommendation of the Planning and Zoning Commission, hearing the statements of staff and the public, and giving due consideration to the matter, determines as provided below.

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

Section 1. Rezoning. The Town Council finds that the Application satisfies all applicable criteria in the Eagle Municipal Code. Based on the foregoing findings, the Town Council hereby approves the Application and rezones the Property from Public Area (PA) to Residential Medium Density (RM). The Town's official zoning map shall be updated accordingly.

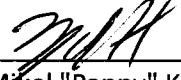
Section 2. Development Agreement. The Town Council hereby approves the associated Development Agreement in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Development Agreement on behalf of the Town.

Section 3. 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 4. Safety. This Ordinance is deemed necessary for the protection of the public health, safety and welfare.

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED ON JANUARY 25, 2022.

TOWN OF EAGLE, COLORADO



Mikel "Pappy" Kerst, Mayor Pro Tem

ATTEST:


Jenny Rakow, Town Clerk



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into and made effective as of the 25th day of January, 2022 (the "Effective Date"), by and between the TOWN OF EAGLE, COLORADO, a Colorado municipal corporation with an address of P.O. Box 609, Eagle, CO 81631 (the "Town"); and EAGLE COUNTY SCHOOL DISTRICT RE-50J, a Colorado public school district, with an address of 948 Chambers Avenue, PO Box 740, Eagle, CO 81631 ("ECS") (each a "Party" and collectively the "Parties").

WHEREAS, ECS owns the real property located within the Town and more particularly described as Eagle Valley Elementary and Middle School Subdivision, according to the Plat thereof recorded on March 11, 2019, at Reception No. 201903217, County of Eagle, State of Colorado (the "Property");

WHEREAS, ECS requested that the Town rezone an unsubdivided portion of the Property pursuant to Eagle Municipal Code § 4.04.030(B) (the "Rezoning");

WHEREAS, the Town approved the Rezoning by action of its Town Council on January 25, 2022;

WHEREAS, the rezoned portion of the Property is legally described on **Exhibit A**, attached hereto and incorporated herein by this reference (the "Rezoned Parcel"); and

WHEREAS, the Eagle Municipal Code requires that the Town and the ECS enter into a Development Agreement in connection with the Rezoning.

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 OF THIS AGREEMENT

1.1 Purpose. This Agreement is intended to set forth the Parties' understanding and agreement as to certain matters relating to the Property and the Rezoned Parcel as required by the Eagle Municipal Code.

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 – DEVELOPMENT LIMITATION

2.1 No Development Until Subdivided. Owner agrees that no portion of the Property, including the Rezoned Parcel, may be developed or further developed until the Property receives

final Town subdivision approval that shall, at minimum, create the Rezoned Parcel as a separate, subdivided lot and each lot in such subdivision is only located in one zone district.

2.2 Attainable Housing. Owner agrees that the Rezoned Parcel, if and when subdivided, will be developed for use as attainable housing, anticipated to be completed with Habitat for Humanity Vail Valley, Inc.

2.3 Public Improvements/Fees and Dedications. Because a development application has yet to be prepared for the Rezoned Parcel, the extent and nature of the development has not been determined. As such, the Parties acknowledge that a later development agreement will be necessary to secure construction of the required public improvements and to establish the required fees and dedications for the development.

SECTION 3 – INDEMNIFICATION

3.1 By ECS. To the extent permitted by law, ECS hereby expressly agrees to indemnify and hold the Town harmless from and against all claims, costs and liability of every kind and nature, arising solely in connection with, or on account of, any legal challenge to the Rezoning on the basis that the Rezoning is not lawful because it created a single lot or parcel that is located within more than one zone district. This indemnification shall not apply to any general legal challenge to the Rezoning other than as specifically stated in this Section 3.1.

SECTION 4 – BREACH AND REMEDIES

4.1 Breach. The Town shall provide ECS 30 days' written notice of its intent to take any action under this Section, during which ECS may cure the breach and prevent further action by the Town.

4.2 Remedies. If ECS 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.

4.3 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 5 – MISCELLANEOUS

5.1 Assignment. This Agreement shall not be assigned by ECS in whole or in part without the prior written authorization of the Town.

5.2 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.

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

5.4 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.

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

5.6 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.

5.7 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.

5.8 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.

5.9 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.

5.10 Termination. This Agreement shall terminate and be of no further force or effect upon the final Town subdivision approval of the Property that shall, at minimum, create the Rezoned Parcel as a separate, subdivided lot and each lot in such subdivision is only located in one zone district. The Parties agree to execute, deliver and record a termination of this Agreement at the time of such subdivision approval.

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

TOWN OF EAGLE, COLORADO



Mikel "Pappy" Kerst, Mayor Pro Tem

ATTEST


Jenny Rakow, Town Clerk

EAGLE COUNTY SCHOOL DISTRICT RE-50J

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

Subscribed and sworn to before me this ____ day of _____, 2022, by
_____ on behalf of Eagle County School District RE-50J.

WITNESS MY HAND AND OFFICIAL SEAL.

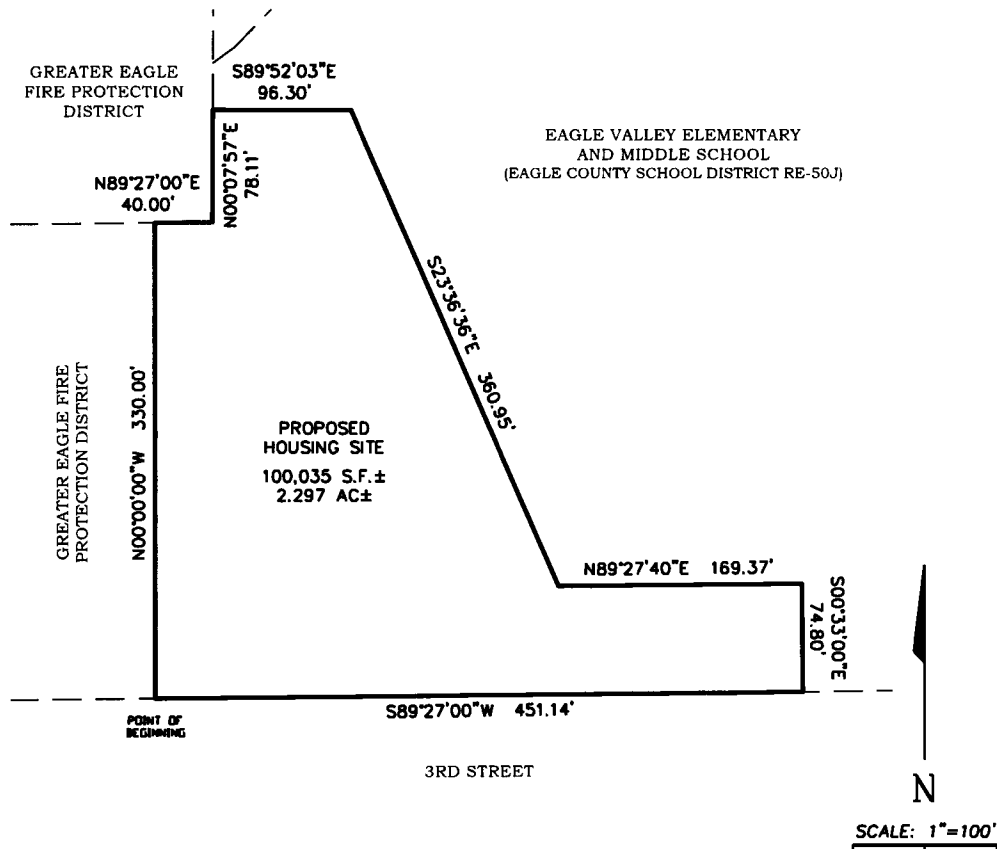
My commission expires: _____

Notary Public

2.3 ACRE PROPOSED HOUSING SITE EXHIBIT

A PORTION OF EAGLE VALLEY ELEMENTARY
AND MIDDLE SCHOOL SUBDIVISION

EXHIBIT
A



2.3± ACRE DESCRIPTION

A 2.3± ACRE PORTION OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 4 SOUTH, RANGE 84 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF EAGLE, EAGLE COUNTY, COLORADO, ALSO BEING A PORTION OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION, ACCORDING TO THE FINAL PLAT OF EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION RECORDED MARCH 11, 2019 AT RECEPTION NO. 201903217, EAGLE COUNTY, COLORADO, THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION; THENCE ALONG THE WESTERLY PROPERTY LINE OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION THE FOLLOWING THREE COURSES; NORTH 330.0 FEET; THENCE N89°27'00"E 40.00 FEET; THENCE N00°07'57"E 78.11 FEET; THENCE DEPARTING THE WESTERLY PROPERTY LINE OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION AND CONTINUING ALONG THE FOLLOWING FOUR COURSES; S89°52'03"E 96.30 FEET; THENCE S23°36'36"E 360.95 FEET; THENCE N89°27'40"E 169.37 FEET; THENCE S00°33'00"E 74.80 FEET TO A POINT ON THE SOUTHERLY PROPERTY LINE OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION; THENCE ALONG THE SOUTHERLY PROPERTY LINE OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION S89°27'00"W 451.14 FEET TO THE POINT OF BEGINNING; SAID PORTION OF LAND CONTAINING 100,035 SQUARE FEET / 2.297 ACRES MORE OR LESS



2.3 ACRE HOUSING SITE EXHIBIT
A PORTION OF THE EAGLE VALLEY ELEMENTARY
AND MIDDLE SCHOOL SUBDIVISION,
LOCATED IN THE SW 1/4 OF SECTION 33
TOWNSHIP 4 SOUTH, RANGE 84 WEST OF THE 6TH P.M.
TOWN OF EAGLE, EAGLE COUNTY, COLORADO

SHEET:
1 OF 1
DATE:
12/02/2021
DWG. NO.:
21060-01
CLIENT:
BRAUN ASSOC.

MERIDIAN
LAND SURVEYING, L.L.C.
P.O. Box 2225 Gypsum, CO 81637
(970) 524-0963

TOWN OF EAGLE, COLORADO

Scott Turnipseed, Mayor ATTEST:

Jenny Rakow, Town Clerk

EAGLE COUNTY SCHOOL DISTRICT RE-50J

Sandra Farrell

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

Subscribed and sworn to before me this 26 day of January, 2022, by Sandra Farrell on behalf of Eagle County School District RE-50J.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: 04/21/2024

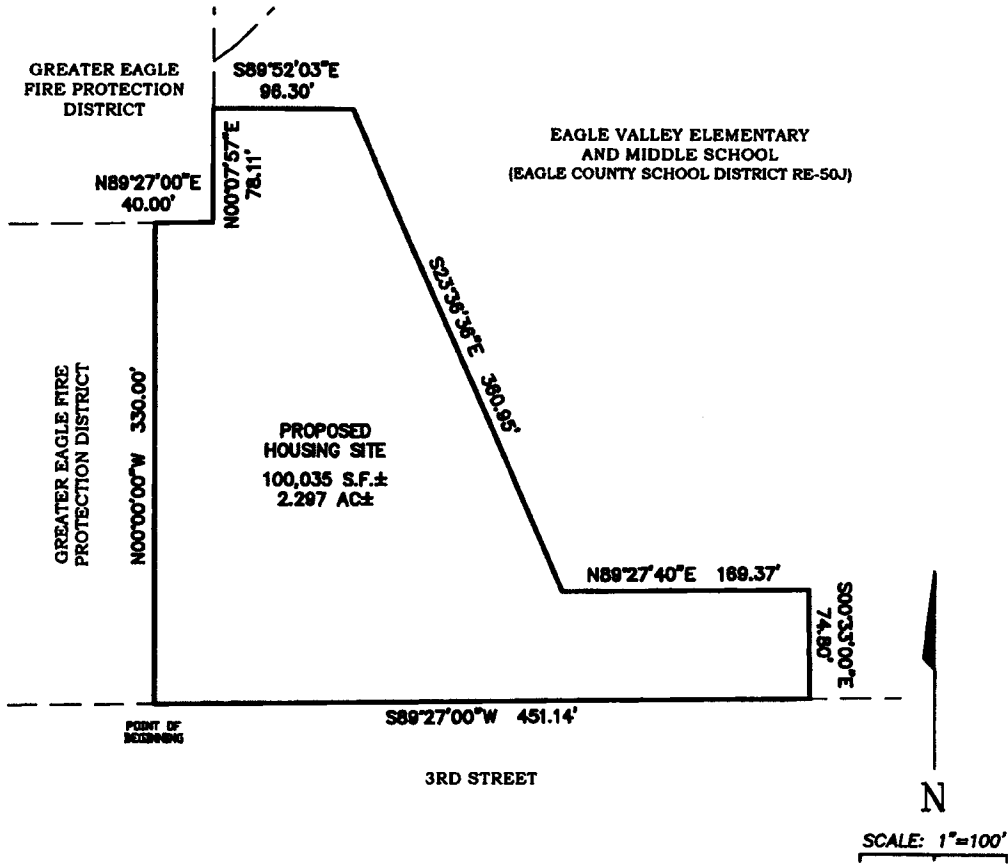
Melissa Gerard
Notary Public

MELISSA GERARD
NOTARY PUBLIC - STATE OF COLORADO
Notary ID #20004012015
My Commission Expires 4/21/2024

2.3 ACRE PROPOSED HOUSING SITE EXHIBIT

A PORTION OF EAGLE VALLEY ELEMENTARY
AND MIDDLE SCHOOL SUBDIVISION

**EXHIBIT
A**



2.3± ACRE DESCRIPTION

A 2.3± ACRE PORTION OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 4 SOUTH, RANGE 84 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF EAGLE, EAGLE COUNTY, COLORADO, ALSO BEING A PORTION OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION, ACCORDING TO THE FINAL PLAT OF EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION RECORDED MARCH 11, 2019 AT RECEPTION NO. 201903217, EAGLE COUNTY, COLORADO, THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION; THENCE ALONG THE WESTERLY PROPERTY LINE OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION THE FOLLOWING THREE COURSES; NORTH 330.0 FEET; THENCE N89°27'00"E 40.00 FEET; THENCE N00°07'57"E 78.11 FEET; THENCE DEPARTING THE WESTERLY PROPERTY LINE OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION AND CONTINUING ALONG THE FOLLOWING FOUR COURSES; S89°52'03"E 98.30 FEET; THENCE S23°36'36"E 360.95 FEET; THENCE N89°27'40"E 169.37 FEET; THENCE S00°33'00"E 74.80 FEET TO A POINT ON THE SOUTHERLY PROPERTY LINE OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION; THENCE ALONG THE SOUTHERLY PROPERTY LINE OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION S89°27'00"W 451.14 FEET TO THE POINT OF BEGINNING; SAID PORTION OF LAND CONTAINING 100,035 SQUARE FEET / 2.297 ACRES MORE OR LESS



<p>2.3 ACRE HOUSING SITE EXHIBIT A PORTION OF THE EAGLE VALLEY ELEMENTARY AND MIDDLE SCHOOL SUBDIVISION, LOCATED IN THE SW 1/4 OF SECTION 33 TOWNSHIP 4 SOUTH, RANGE 84 WEST OF THE 6TH P.M. TOWN OF EAGLE, EAGLE COUNTY, COLORADO</p>	SHEET: 1 OF 1	 MERIDIAN LAND SURVEYING, L.L.C. P.O. Box 2225 Gypsum, CO 81637 (970) 524-0983
	DATE: 12/02/2021	
	DWS NO: 21060-01	
	CLIENT: BRAUN ASSOC.	
	(Empty cell)	

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 ORDINANCE NO. 05 (Series of 2022) AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF EAGLE, COLORADO REZONING THE PROPERTY LOCATED AT 747 EAST 3RD STREET, EAGLE, COLORADO FROM PUBLIC AREA (PA) TO RESIDENTIAL MEDIUM DENSITY (RM), AND APPROVING THE ASSOCIATED DEVELOPMENT AGREEMENT. on the Town of Eagle's web site, www.townofeagle.org on the 11th day of January 2022.

Witness my hand and seal this 28th day of January 2022.



Jenny Rakow
Town Clerk



Ordinance Effective Date:
February 8, 2022