

ANNEXATION AGREEMENT
(Reserve at Hockett Gulch)

THIS ANNEXATION AGREEMENT (the "Agreement") is entered into and made effective as of the _____ day of _____, 2019 (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 BCP-EAGLE I, LLC, a Colorado limited liability company with an address of 1555 Blake Street, Suite 210, Denver, Colorado 80202 ("Developer") (each a "Party" and collectively the "Parties").

WHEREAS, Developer is the owner of the real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, on March 7, 2018, Developer filed a Petition for Annexation with the Town;

WHEREAS, Developer desires to annex the Property to the Town and thereafter intends to develop the Property into a mixed-use project (the "Development"); and

WHEREAS, contemporaneously with the annexation of the Property, the Board is approving a planned unit development for the Property (the "PUD").

NOW, THEREFORE, 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:

1. Purpose. The purpose of this Agreement is to set forth the terms under which the Property will be annexed to the Town. Unless otherwise expressly provided to the contrary herein, all conditions contained herein are in addition to any and all requirements of the Eagle Municipal Code, as amended (the "Code"), and other applicable law.
2. 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.
3. Rights Reserved. Nothing in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as 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.
4. Zoning. Developer hereby consents to the zoning of the Property as Planned Unit Development pursuant to Chapter 4.11 of the Code, and as further set forth in the PUD. Notwithstanding any other provision of this Agreement, should the Town fail to approve the PUD, Developer shall be entitled to rescission of this Agreement without any penalty whatsoever.

5. Development Agreement.

a. Prior to the Town issuing the first Development Permit for the Development, Developer shall execute a development agreement with the Town (the "Development Agreement"). The Development Agreement shall include all of the following provisions, at a minimum:

i. *Public Improvements Generally.* A requirement that Developer construct, at its own expense, all public improvements required for the Development (the "Public Improvements"), which requirements shall be determined at the time of submission of the Development Plan application.

ii. *Sylvan Lake Road Improvements.* A requirement that Developer construct the required northbound left hand turn lane into the Development and southbound right deceleration lane into the Development, which shall be the only required improvements on Sylvan Lake Road.

iii. *Grand Avenue Road Improvements.* A requirement that Developer construct the eastbound right deceleration lane into the Development, the eastbound right acceleration lane out of the Development, and the westbound left hand turn lane into the Development, which shall be the only required improvements on Grand Avenue.

iv. *Water Line.* A requirement that Developer install a 16" water line. The Development only requires a 12" water line, but the Town has requested a 16" water line. The Town shall pay for the cost of the upsizing to 16", provided that Developer, prior to construction, shall obtain: 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. The fractional increase between the two bids shall be used to determine the Town's *pro rata* share of the actual costs to install the 16" water line.

v. *Restroom.* A requirement that Developer, at its cost, construct a waterless vault toilet system restroom on a parcel of land owned by the Town and adjacent to Property, as shown on the PUD. The Town may instead require Developer to install a water and sewer-serviced restroom, provided that the cost of designing and constructing the restroom shall be allocated between Developer and the Town as follows: Developer, prior to construction, shall obtain: a bid from its preferred engineer and contractor for the design and construction of the waterless vault toilet system; and a bid from its preferred engineer and contractor for the design and construction of a water and sewer-serviced restroom. The fractional increase between the two bids shall be used to determine the Town's *pro rata* share of the actual costs to install the restroom. In addition, prior to construction, the Town shall grant Developer a temporary construction easement sufficient to allow Developer to construct the restroom on the Town's property. The restroom shall be subject to the Town's standard acceptance and warranty procedures.

vi. *Insurance and Indemnification Provisions.* Standard insurance and indemnification provisions.

vii. *Performance Guarantee.* A requirement that Developer post a performance guarantee to secure the construction of the Public Improvements in a form and amount reasonably acceptable to the Town and in accordance with the Code, as amended.

viii. *Impact Fees.* An acknowledgment that all impact fees to be paid by Developer, including without limitation the street improvement fee set forth in Code § 4.13.220, the fire protection impact fee set forth in Code § 4.13.230, the water plant investment fee required by Code § 12.16.010, and 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.

ix. *Workforce Housing.* The required workforce housing to be included in the Development as delineated in the PUD and this Agreement.

x. *Maintenance.* Provisions addressing maintenance of open space and landscaping in the Development.

xi. *Open Space.* A requirement that at the time of the recording of the final plat, Parcel OS-1, as described in the PUD, will be conveyed to the Town by special warranty deed, subject to the reservation of any temporary or permanent easements necessary for construction, utilities, debris flow mitigation, drainage and fencing.

xii. *Assignment.* A provision allowing assignment of the Development Agreement to SLR Apartments or an affiliate thereof, or any other future developer of the Property that owns the Property in whole or in part.

xiii. *Other Provisions.* Language reflecting Sections 7, 8, 9 and 11 of this Agreement.

b. With alternates approved by the Board of Trustees in the PUD and this Agreement, the PUD satisfies the municipal and park land dedication required by Code § 4.13.190 and the school land dedication required by Code § 4.13.080, so those dedications need not be addressed in the Development Agreement.

6. Term and Termination.

a. This Agreement shall commence on the Effective Date. If the PUD is not approved by the Town or is successfully challenged, or if the annexation of the Property is not completed, then this Agreement shall be null and void and of no force and effect whatsoever. If the annexation proceeds and the PUD is approved, **this Agreement shall terminate as of the effective date of the Development Agreement.**

b. If any judicial proceeding or other legal action is brought by a third party, including referendum or initiative, that challenges this Agreement, the annexation of the

Property to the Town, the PUD or any of the Town's resolutions or ordinances approving the annexation of the Property to the Town, this Agreement or the PUD, this Agreement will remain in full force and effect through and until the 31st day following entry of a final, non-appealable order resolving such legal action, unless earlier terminated or modified by a written amendment signed by all Parties. However, to the extent any development permits, building permits, or any other approval necessary for the Development are delayed or withheld due to the legal action described above, any obligations of Developer under this Agreement shall be tolled until resolution of such legal action.

7. Access.

a. *Easement.* The Town, at no cost to Developer, shall grant Developer a non-exclusive easement to Developer for the construction, maintenance, repair, replacement, and other similar items of a road for vehicular and pedestrian ingress and egress from the Development to Sylvan Lake Road, in a location to be mutually determined by the Parties.

b. *Permits.* Developer intends to submit to the Town applications for two access permits for vehicular access and curb cuts on Sylvan Lake Road and Grand Avenue in the approximate locations depicted in the PUD, subject to rules, regulations and guidelines applied by the Town and further subject to public health, safety and welfare concerns. If the applications comply with the Code and other applicable law, the Town agrees to issue such permits, provided that nothing herein shall constitute a waiver of the Town's police power to protect the public health, safety and welfare.

8. Water.

a. *Raw Water Irrigation.* Developer shall install, maintain, operate, repair and replace a raw water irrigation system to provide nonpotable water for irrigation of permanently irrigated landscaped area 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. 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. This 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 credit. The Town will grant a revocable license to Developer for installation of the raw water irrigation system across Town property. The Town will also lease back to Developer the water rights necessary to operate the raw water irrigation system.

b. *Housing Credit.* 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 12 hereof. 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.

c. *Previous Water Rights Dedication.* Developer's predecessor-in-interest previously dedicated a portion of the Property's water rights in Ditch No.3, which resulted in an agreement with the Town, recorded in Eagle County on July 13, 1981 at Reception No. 222183, for a water rights dedication credit of 88.0 EQRs (the "EQR Credit") for purposes of calculating any fees-in-lieu or further water rights dedication requirements that the proposed Development would require beyond the EQR Credit. Upon the effective date of the annexation, Developer shall convey, via Special Warranty Deed, all of its remaining interest in the Ditch No. 3 water right (13.1 acre-feet of historical consumptive use), and the description of the water rights conveyed shall be as follows: "0.5 C.F.S. OUT OF DITCH NO. 3, PRIORITY NO. 52 OUT OF BRUSH CREEK, EAGLE COUNTY, COLORADO, BEING ADJUDICATED IN CIVIL ACTION NO. 294, DECREE DATED DECEMBER 17, 1889." The foregoing conveyance shall satisfy and be utilized for the Development's raw water irrigation system. Developer shall be responsible for paying any and all costs and fees incurred by the Town in pursuing a case in water court to change this remaining interest in Ditch No. 3 to be used for the Development's raw water irrigation system; provided that, other than the payment of such costs and fees, Developer shall not be responsible for the water court litigation or the outcome thereof and the Town shall not require from Developer any additional water rights dedication beyond the 13.1 acre-feet of historical consumptive use available under Ditch No. 3 to satisfy the needs of the raw water irrigation system.

d. *Cash-in-lieu of Water Rights Dedication for Potable System.*

i. After the dedication of Developer's remaining interest in the Ditch No. 3 water right described above for use in the raw water irrigation system, Developer does not have any remaining water rights associated with the Property to dedicate to meet the water rights dedication requirements set forth in Code § 12.26.030. Therefore, Developer shall pay \$3,500 per EQR for 272.5 EQR for a total of \$953,750 (the "Cash-in-Lieu").

ii. The Cash-in-Lieu is not an impact fee, because it is paid in lieu of the water rights dedication required by Code § 12.26.030, which is a substitution of cash for buckets of water to ensure that the Town has sufficient cash to purchase water that may be necessary to serve the Development as set forth in Code § 12.26.010.

iii. The Cash-in-Lieu shall be paid upon issuance of the first building permit of the Development, or within one year of the Effective Date, whichever occurs first. To secure the timely payment of the Cash-in-Lieu, Developer shall post an irrevocable letter of credit, in a form approved by the Town Attorney, for the full amount of the Cash-in-Lieu. The letter of credit shall be posted within 7 days of the Effective Date.

iv. Code Chapter 12.26 is a supplemental requirement for annexation pursuant to Code Chapter 4.15 and the Municipal Annexation Act of 1965, C.R.S. § 31-12-101, *et seq.*, and is not to be construed as altering, modifying, eliminating or replacing any requirements set forth therein.

9. Grand Ave 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. Vested Rights. The PUD, together with any conditions of approval imposed by the Board of Trustees, shall constitute 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 7 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.

11. Payment of Improvement Recapture Fees to West Eagle Ranch, LLC.

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 as set forth on **Exhibit B**. 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 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.

12. Workforce Housing.

a. *For-Sale and For-Rent Restrictions.* 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 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 C** 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 D** 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.

b. *Timing.*

i. Each 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.

ii. Each 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. *Rental of For-Sale Unit.* 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.

d. *Non-Residential Uses.* There shall be no local employee residency requirement for any non-residential uses in the PUD.

13. Real Estate Transfer Assessment. Within 30 days of the Effective Date, Developer shall record a covenant against the Property requiring payment of a real estate transfer assessment in the amount of 2% of the consideration paid for each non-exempt transfer of any real property in the Development (the "RETA"), up to a maximum of \$250,000 per transfer. The covenant shall be in substantially the form attached hereto as **Exhibit E** and incorporated herein by this reference. The funds collected from the RETA shall be transmitted to the Town,

to be deposited in the general fund and used for public purposes as the Town determines necessary.

14. 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.

I. *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.

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

TOWN OF EAGLE, COLORADO

Anne McKibbin, Mayor

ATTEST:

Jenny Rakow, Town Clerk

BCP – EAGLE I, LLC

STATE OF COLORADO)
)ss.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 2019, by _____ as _____ of BCP-Eagle I, LLC.

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 SOUTHWEST 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.

EXHIBIT B

Recapture Amounts Calculation

The Reserve at Hockett Gulch Recapture Fees

Sylvan Lake Road Extension =	\$0.00
Highway 6 Access Improvements =	\$395,321.64
Wastewater Improvements =	\$32,382.33
Total Recapture Fees =	\$427,703.97

Sylvan Lake Road Extension

Total Cost = \$1,635,334.90

Per MOU with West Eagle Ranch, LLC dated November 13, 2007

Per the *Transportation Impact Study for The Reserve at Hockett Gulch* ; dated January 30, 2018; prepared by McDowell Engineering, LLC, there are no vehicle trips generated for this section of roadway.

The Reserve at Hockett Gulch Pro Rata Share = \$0.00

Reserve at Hockett Gulch Trip Generation - Highway 6 Access Improvements

Total Cost of Highway 6 Access Improvements = \$1,983,299.25

(Per MOU with West Eagle Ranch, LLC dated November 13, 2007)

Vehicle Trips Generated by The Reserve at Hockett Gulch at Build-Out to Hwy 6 Access*				
Total Vehicle Trips	Avg. Weekday Total (ADT)	Directional Distribution**		Contributing Trips (ADT)
		From Hwy 6 (west)	From Sylvan Lake Rd	
Residential	3262	50%	25%	2447
Retail	1928	55%	5%	1157
New Contributing Vehicle Trips				3604

Developments Contributing to ADT	ADT
Eagle Ranch	11,521
Haymeadow	2,956
Reserve at Hockett Gulch	3,604
Total	18,081

From 'Exhibit J' Haymeadow Recapture Fees

From 'Exhibit J' Haymeadow Recapture Fees

The Reserve at Hockett Gulch Pro Rata Share = $(3604/18,081) \times \$1,983,299.25 = \mathbf{\$395,321.64}$

*Per the *Transportation Impact Study for The Reserve at Hockett Gulch* ; dated January 30, 2018; prepared by McDowell Engineering, LLC

** The trip distribution percentages were obtained from Figures 9-11 of the Transportation Impact

Wastewater Improvements

Total Cost = \$204,379.20

(Per MOU with West Eagle Ranch, LLC dated November 13, 2007)

Developments Contributing	EQRs
Eagle Ranch	1270
Haymeadow	837
Reserve at Hockett Gulch	396
Total	2503

Per Haymeadow ADA 3/24/14

Per Sanitary Sewer PIF
Calculation

The Reserve at Hockett Gulch *Pro Rata* Share = $(396/2503) \times \$204,379.20 = \$32,382.33$

EXHIBIT C

Deed Restriction

DEED RESTRICTION AGREEMENT
(Reserve at Hockett Gulch)

THIS DEED RESTRICTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2019 (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

Anne McKibbin, Mayor

ATTEST:

Jenny Rakow, Town Clerk

DEVELOPER

STATE OF COLORADO)
)ss.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 2019, by _____ as _____ of _____.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

Notary Public

EXHIBIT D

Rental Restriction

RENTAL RESTRICTION AGREEMENT
(Reserve at Hockett Gulch)

THIS RENTAL RESTRICTION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2019 (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

Anne McKibbin, Mayor

ATTEST:

Jenny Rakow, Town Clerk

OWNER

STATE OF COLORADO)
)ss.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 2019, by
_____ as _____ of _____.

My commission expires:

Notary Public

EXHIBIT E

Real Estate Transfer Assessment

COVENANT OF REAL ESTATE TRANSFER ASSESSMENT

This Covenant of Real Estate Transfer Assessment (the "Covenant") is made by _____ ("Owner"), effective upon its recording in the Eagle County, Colorado, real property records (the "Effective Date").

WHEREAS, Owner owns that certain property more particularly described in **Exhibit 1**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Owner entered into an Annexation Agreement with the Town of Eagle, Colorado (the "Town") dated _____ and Owner agreed to a residential real estate transfer assessment in the amount of 2% of the Consideration (defined below) paid for each residential property transfer of any portion of the Property, excluding Exempt Transfers (defined below); and

WHEREAS, each person acquiring any interest in any portion, lot or tract within the Property shall be deemed for all purposes to have assented and agreed, as an essential condition of any conveyance to it, to the provisions of this Covenant, to have agreed to comply with this Covenant and to have waived any right to challenge or contest the provisions hereof or to seek any refund or abatement of the assessment payable hereunder.

NOW THEREFORE, Owner hereby covenants and binds the Property as follows:

1. **Covenant.** Owner hereby covenants and agrees that, except for Exempt Transfers, a transfer assessment (the "Transfer Assessment") based on a percentage of the Consideration paid on the transfer of any portion of or interest in the Property shall be due and payable by the Transferee at the time of transfer and shall apply to each transfer of any portion of or interest in the Property. **The Transfer Assessment is 2% of the Consideration for such transfer and is capped at \$250,000.00 for any single transaction.** Owner hereby waives, on behalf of itself and its successors in title, any right to challenge the Transfer Assessment on any basis.

2. **Definitions.** For purposes of this Covenant, the following words are defined as follows:

a. "Transfer" means and includes, whether in one transaction or in a series of related transactions, any conveyance, ground lease with a term exceeding 30 years ("Lease") or other Transfer of beneficial ownership of any residential portion of the Property, including but not limited to (i) the conveyance of fee simple title to any residential portion of the Property, (ii) the Transfer of more than 50% of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns the Property, and (iii) the Transfer of more than 50% of the interest in net profits or net losses of any partnership, limited liability company, joint venture or other entity which, directly or indirectly, owns the Property. "Transfer" shall not mean or include the Transfers excluded under Section 3.

b. "Transferee" means and includes all parties to whom any interest in the Property passes by a Transfer, and each party included in the term "Transferee" shall have joint and several liability for all obligations of the Transferee under this Covenant.

c. "Fair Market Value" means the Consideration, as such term is defined below, given for the Transfer, or, in the case of a Transfer that is a Lease not exempt under Section 3 or is otherwise not in all respects a bona fide sale, as determined by the Town. The Town shall give written notice to the Transferee if the Town disputes the Consideration as the Fair Market Value within 15 days after the Transferee provides the Town the report of the Transfer as required herein. Failing to do so, the Consideration shall be deemed binding as the Fair market Value of the Transfer. If the Town objects by written notice delivered to the Transferee within the time allotted herein, then a Transferee may make written objection to the Town's determination within 15 days after the Town has given notice of such determination, in which event the Town shall obtain an appraisal, at the Transferee's sole expense, from a real estate appraiser of good reputation, who is qualified to perform appraisals in Colorado, who is familiar with Eagle County real estate values, and who shall be selected by the Town. The appraisal shall be binding on both the Town and the Transferee as to the Fair Market Value of the Transfer. Notwithstanding the foregoing, where a Transferee does not make a full report of a Transfer within 15 days after the time required by this Covenant for making such report, the Transferee shall be deemed to have waived all right of objection concerning Fair Market Value, and the Town's determination of such value shall be binding.

d. "Consideration" means and includes the total of money paid and the Fair Market Value of any property delivered, or contracted to be paid or delivered, in return for the Transfer of any Property, and includes any money or property paid or delivered to obtain a contract right to purchase any Property, and the amount of any note, contract indebtedness (including without limitation obligations which could be characterized as contingent land gain), or rental payment reserved in connection with such Transfer, whether or not secured by any lien, mortgage, or other encumbrance, given to secure the Transfer price, or any part thereof, or remaining unpaid on the property at the time of Transfer, whether or not assumed by the Transferee. The term "Consideration" does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements in favor of the United States, the State of Colorado, or a municipal or quasi-municipal governmental entity.

e. "Affiliate" means, with respect to the person or entity, any other person or entity which controls, is controlled by, or is under common control with, such original person or entity. For the purposes of this definition, "control" means the ability to directly or indirectly manage, determine and control the operations and business affairs of a person or entity, whether through the ownership of at least 50% of the voting securities, by contract or otherwise.

3. Exemptions. Except to the extent that they are used for the purpose of avoiding the Transfer Assessment, the Transfer Assessment shall not apply to any of the following (each an "Exempt Transfer" and collectively "Exempt Transfers"),:

- a. Any Transfer to the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of the State of Colorado.
- b. Any Transfer to Owner or an Affiliate of Owner.
- c. Any Transfer to a lender pursuant to a deed of trust or other security interest (“Financing Encumbrance”).
- d. Any Transfer pursuant to a foreclosure, sale, transfer, assignment, or deed-in-lieu pursuant to the rights and remedies of any Financing Encumbrance or other Transfer for the benefit of creditors.
- e. Any Transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership, except to the extent that additional consideration is paid in connection therewith;
- f. Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution;
- g. Any Transfer made (i) to an Affiliate without consideration except of the cancellation of stock, membership interest, or other beneficial interest; or (ii) by an entity, trust or joint venture (collectively, an “Entity”) to its shareholders, partners, members, or beneficiaries (collectively, the “Members”) in connection with the liquidation of such Entity or other distribution of property or dividend in kind to Members, if the Property is Transferred generally pro rata or in accordance with its Entity organizational documents to its Members, and no consideration is paid other than the cancellation of the Member’s interest in the Entity.
- h. Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights-of-way or licenses.
- i. Any Transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second assessable Transfer in a series of transactions which includes only one effective Transfer of the right to use or enjoyment of a Property.
- j. Any lease of any Property (or assignment or Transfer of any interest in any such lease) for a period of less than 30 years.
- k. Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation, including Transfers in connection with foreclosure of a deed of trust or mortgage or Transfers in connection with a deed given in lieu of foreclosure.

l. The subsequent Transfer(s) of a Property involved in a "tax free" or "tax deferred" trade under the Internal Revenue Code, including but not limited to like-kind exchanges.

m. Any Transfer of any portion of the Property that does not contain inhabitable, residential improvements.

4. Application for Exemption.

a. In the event of any Transfer evidenced by a recorded deed that is claimed to be an Exempt Transfer, the Transferee shall apply to the Town Manager for a certificate of exemption. The burden of proving any exemption shall in all cases be upon the one claiming it. The certificate may be issued by the Town Manager either before or after the execution of the instruments effecting the Transfer. The certificate shall be in a form prepared by the Town Manager. For any Transfers not evidenced by a recorded deed, including but not limited to Entity restructures, the Transferee may, but is not required to apply to the Town Manager for a certificate of exemption.

b. Any exemption denied by the Town Manager may be appealed to the Town's Board of Trustees (the "Board of Trustees") within 7 days, and such appeal shall be considered by the Board of Trustees within 30 days of receipt of the same and the appellant shall not be required to post any bond or deposit while the appeal is pending.

5. Receipt and Application of Funds. The Transfer Assessment may be paid either by the buyer or the seller of the Property, as may be negotiated in each transaction. All Transfer Assessments shall be paid directly to the Town. A portion of the funds may be used to administer the collection of the Transfer Assessment.

6. Penalties and Liens. Penalties and liens shall be imposed as set forth below.

THIS SECTION DOESN'T ACTUALLY SAY ANYTHING ABOUT LIENS? DO LIENS FALL UNDER SECTION C. ?

a. Except for Exempt Transfers, the Transfer Assessment is due and payable at the time of the Transfer, and is delinquent if it remains unpaid for 30 days thereafter. In the event that the Transfer Assessment is not paid prior to becoming delinquent, a delinquency penalty of 10% of the amount of Transfer Assessment due shall accrue. If a portion of the Transfer Assessment is paid prior to becoming delinquent, the penalty shall only accrue as to the delinquent portion. Interest shall accrue at the rate of one and 1.5% per month, or fraction thereof, compounded annually, on the amount of Transfer Assessment exclusive of penalties, from the date the tax becomes delinquent to the date of payment. The Town shall also be entitled to recover the reasonable expenses of collection, including attorney fees and court costs, which shall become part of the Transfer Assessment.

b. Any person liable for a Transfer Assessment who causes the deed, instrument of conveyance or document evidencing said Transfer to be filed of record in the office of the Eagle County Clerk and Recorder or attempts to so record the document before the Transfer

Assessment and all penalties and interest thereon have been paid in full, shall be in violation of this Covenant.

c. Any remedies provided for herein shall be cumulative, not exclusive, and shall be in addition to any other remedies provided by law.

7. Relationship to Land. Owner acknowledges and agrees that the obligations imposed by this Covenant are related to and touch and concern the Property.

8. Recording. This Covenant shall be recorded in the records of Eagle County, Colorado.

9. Enforcement. This Covenant is made for the express benefit of the owners and occupants of the Property and for the additional express benefit of the Town. The Town shall have the right and power to bring suit for either legal or equitable relief for any breach, default or lack of compliance with the provisions of this Covenant, provided that no suit may be filed until the Town and Owner or its successors and assigns is provided with written notice of such breach or lack of compliance and fails to cure such breach or lack of compliance within 10 days after the mailing of such notice. Further, the Town shall have the right to refuse to further process or deny any building permit, certificate of occupancy or development application with regard to any portion of the Property for which a Transfer Assessment is owed and not paid. Owner shall not have any obligation to enforce this Covenant, and the failure to pay any Transfer Assessment payable hereunder upon subsequent transactions shall not constitute a default by Owner hereunder.

10. Defense and Cure of Covenant.

a. In the event of any legal challenge by a third party to the validity or enforceability of any provision of this Covenant, Owner shall cooperate with the Town, as necessary, in the defense of such challenge. During the pendency of any such legal challenge, through and including any final court action, Owner shall not assert any legal position contrary to the enforceability of this Covenant. However, Owner shall not be obligated to defend any challenge to this Covenant and may disclaim its interest or fail to respond to any action or pleading, unless required to respond by court order.

b. In the event of a final court action determining this Covenant to be invalid or unenforceable, in whole or in part, Owner shall cooperate with the Town as necessary, and use its efforts to cure any legal defects, and immediately upon such cure, take such actions as may be necessary to render the terms of this Covenant effective and enforceable. No such action shall alter the amount of the Transfer Assessment.

c. Owner shall not be required to purchase or repurchase any of the Property to effect a cure nor be required to pay any transfer fees not collectable by the Town because this Covenant is held to be invalid or unenforceable by any final court action.

11. Severability. Any determination by any court of competent jurisdiction that any provision of this Covenant is invalid or unenforceable shall not affect the validity or enforceability of any other provision hereof.
12. Statement Regarding Assessment. Upon written request by any interested party, the Town shall issue a written statement setting forth the amount of any unpaid Transfer Assessment with respect to any specific portion of the Property identified in such request. Such statement shall be furnished as soon as reasonably practicable, but in no event later than 30 days after receipt of the request, and shall be binding on the Town.
13. Other Real Estate Transfer Assessments. Owner reserves the right to impose additional real estate transfer assessments by covenant upon the Property, including, without limitation, a real estate transfer assessment contained in a common interest community declaration to be recorded against the Property. The Town acknowledges that additional real estate transfer assessments may be imposed upon the Property.
14. Amendment. The Owner may amend or terminate this Covenant. However, this Covenant shall not be amended or terminated without the advance written consent of the Board of Trustees. If the Town provides such consent, no amendment shall be effective unless it is contained in a written instrument signed and acknowledged by Owner or its successors in the same manner as a deed and duly recorded in the records of Eagle County, Colorado.
15. Term. Except as provided herein, the term of this Covenant shall be perpetual.
16. Colorado Law. The interpretation, enforcement or any other matters relative to this Covenant shall be construed and determined in accordance with the laws of the State of Colorado.
17. Binding on Successors. The provisions of this Covenant shall run with the Property and be binding on all persons who hereafter acquire any interest in the Property, whether as an owner, renter, trustee, or mortgage beneficiary or otherwise.
18. Encumbrance. Until terminated, each and every provision contained in this Covenant shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is transferred, granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

IN WITNESS WHEREOF, Owner has executed this Covenant as of the date first written above.

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

Subscribed and sworn to before me this ____ day of _____, 2019, by
_____ as _____ of _____.

My commission expires: _____

Exhibit 1
LEGAL DESCRIPTION