

**PLANNED UNIT DEVELOPMENT AGREEMENT
FOR
TOWN OF EATON
(The Homes at Aspen Meadows – Phase IV)**

This Planned Unit Development Agreement (this “Agreement”), is made and entered into by and between the **Town of Eaton, Colorado**, a municipal corporation (the “Town”) and **Aspen Meadows Development, LLC**, a Colorado limited liability company (“Developer”).

WITNESSETH:

WHEREAS, Lynn A. and Leslie K. Fagerberg (“Owners”) currently own the parcel of land situated in the Town of Eaton, County of Weld, State of Colorado, the description of which is set forth on **Exhibit “A”** attached hereto and incorporated herein by this reference (the “Development”); and

WHEREAS, Developer has entered into a contract with Owners to purchase the Development from Owners and, prior to commencement of the construction of the Public Improvements and Private Improvements contemplated herein, will own the Development; and

WHEREAS, Developer previously obtained approval to develop The Homes at Aspen Meadows, P.U.D., Town of Eaton, County of Weld, State of Colorado, excluding Tract A and Tract B thereof; and

WHEREAS, Developer currently seeks approval to develop the Development as part of a phased development of the Planned Unit Development pursuant to Chapter VII, Section III of the Eaton Municipal Code, which included approval of the PUD plat attached hereto as **Exhibit “B-1”** and incorporated herein by this reference (“PUD Plat”), and to develop the PUD in phases; and

WHEREAS, on or about May 19, 2016, the Developer obtained approval to develop The Homes at Aspen Meadows First Filing P.U.D. (“Phase I of the PUD”); and

WHEREAS, on or about October 20, 2016, the Developer obtained approval to develop The Homes at Aspen Meadows Second Filing P.U.D. (“Phase II of the PUD”); and

WHEREAS, on or about June 15, 2017, the Developer obtained approval to develop The Homes at Aspen Meadows Third Filing P.U.D. (“Phase III of the PUD”); and

WHEREAS, Developer submitted a final plat of The Homes at Aspen Meadows Fourth Filing P.U.D., which plat is signed by Owners, and which is attached hereto as **Exhibit “B-2”** and incorporated herein by this reference (“Final Plat”); and

WHEREAS, the Town Board approved the Final Plat by passage of Resolution No. 2017-___, containing terms and conditions of approval of the Final Plat, which Resolution is attached hereto as **Exhibit “B-3”** and incorporated herein by this reference (“Resolution”); and

WHEREAS, Developer understands and agrees that, as a further condition of approval of the Final Plat, Developer is required to construct certain subdivision improvements to the Development, that Developer is responsible for the costs and expenses of those subdivision improvements unless otherwise provided herein, and that the subdivision improvements contemplated herein are reasonable, necessary, appropriate, and directly benefit the Development; and

WHEREAS, Developer agrees to undertake and complete the Development in accordance with this Agreement, the PUD Plat, the Final Plat, the Resolution, the Town’s ordinances (to the extent applicable), resolutions and regulations and all other applicable laws and regulations.

NOW, THEREFORE, in consideration of the premises cited above and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the Town and Developer agree as follows:

RECITALS AND DEFINITIONS

The Recitals are incorporated herein and made a part of this Agreement. For the purposes of this Agreement, the following words and terms shall be defined as follows:

1.1 **“Approved Plans”** shall mean: (1) with respect to the Public Improvements, the approved “Civil Engineering Construction Plans” related to the Development and on file with Town; and (2) with respect to the Private Improvements, the approved “Site Development Plan” related to the Development and on file with Town.

1.2 **“Developer”** shall mean Aspen Meadows Development, LLC, a Colorado limited liability company, which, prior to development, shall be the owner of the property described in **Exhibit “A”** and any heirs, successors, assigns or transferees of any of the property described in **Exhibit “A.”**

1.3 **“Civil Engineering Construction Plans”** shall mean the approved engineering plans for construction, installation and improvement of the Public Improvements, as defined in Section 2.1.a.below.

1.4 **“Development”** shall mean all the property, property rights and subdivision improvements within the legal description in **Exhibit “A.”**

1.5 **“Dry Utilities”** shall mean electricity, natural gas, cable and telephone.

1.6 **“Maintenance Guarantee”** shall mean a guarantee that the Subdivision Improvements constructed shall be free from defects and failures as more fully described in Paragraphs 5.2 and 5.4 below.

1.7 **“Private Improvements”** shall mean, without limitation, the construction, installation and improvement of privately owned and maintained common improvements including, but not limited to, landscaping, irrigation, fencing, entry signs, street signs and posts, street lighting, parks and open space, trails, postal service boxes and school bus stop shelters.

1.8 **“Public Improvements”** shall mean, without limitation, the construction, installation, improvement and dedication of public improvements, including, but not limited to, public thoroughfares and streets, sanitary sewer facilities, water line facilities, drainage facilities, irrigation structures, storm water improvements and other public facilities and improvements to serve the Development.

1.9 **“Site Development Plan”** shall mean the approved plans for the construction, installation and improvement of the Private Improvements.

1.10 **“Subdivision Improvements”** shall mean the Public Improvements, Private Improvements and Dry-Utilities.

1.11 **“Town”** shall mean the Town of Eaton, Colorado.

1.12 **“Town Engineer”** shall mean the professional engineer designated by the Town Administrator to perform the obligations set forth in this Agreement.

1.13 **“Town Administrator”** shall include the Town Administrator and his authorized designees.

1.14 **“Town Official”** shall include the Town Administrator, Town Attorney, Town Engineer and their authorized designees.

SUBDIVISION IMPROVEMENTS

2. Public Improvements

2.1 Pre-Construction

a. **Engineering Services:** Developer shall furnish, at its own expense, all engineering services in connection with construction, installation and improvement of the Public Improvements. Engineering services shall be performed by a professional engineer registered in the State of Colorado. Engineering services shall consist of, but not be limited to, survey, designs, plans and profiles, specifications, drawings, estimates, construction administration, and the furnishing of necessary documents in connection therewith, including but not limited to final engineering drawings, final sewer and water design plans and final drainage plans (the “Civil Engineering Construction Plans”).

b. **Civil Engineering Construction Plans:** Prior to commencing construction of the Public Improvements, Developer shall submit the Civil Engineering Construction Plans to the Town Engineer for review. Construction of the Public Improvements shall not commence until the Town provides written notice of approval of the Civil Engineering Construction Plans. Developer shall not thereafter modify the approved Civil Engineering Construction Plans without the written approval of the Town. The Town’s review and approval of the Civil Engineering Construction Plans shall not limit or affect Developer’s responsibility or liability for design, construction and installation of the Public Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to such design, construction and installation, other than negligent designs which are required by the Town over Developer’s written objection.

c. **Rights-of-Way, Easements, Permits and Use Tax:** Prior to commencing construction of the Public Improvements, Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances, on all lands and facilities, if any, traversed by the proposed Public Improvements. All such rights-of-way and easements shall be conveyed to the Town and the documents of conveyance shall be furnished to the Town Administrator for recording. At the Town’s request, Developer shall provide, at its sole expense, a policy of title insurance insuring title in the Town, free and clear of all liens and encumbrances, for all land, property and easements dedicated or conveyed to the Town or for public use. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Public Improvements. Developer shall also pay all applicable use tax due and owing to the Town.

2.2 ***Construction of Public Improvements:*** Upon satisfaction of the conditions set forth in Paragraph 2.1, Developer shall construct the Public Improvements at its own expense in accordance with this Agreement, the PUD Plat, the Final Plat, the Resolution, the Civil Engineering Construction Plans, the Town’s ordinances, resolutions and regulations and all other applicable laws and regulations. All Public Improvements shall be installed and constructed within the rights-of-way or easements dedicated to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Public Improvements shall be new and both workmanship and materials shall be of good quality.

2.3 ***Construction Schedule:*** Developer shall construct the Public Improvements in accordance with the schedule of public improvements as well as the itemized cost estimate of the Public Improvements set forth on “**Exhibit C,**” attached hereto and incorporated herein by reference (“Schedule of Public Improvements”).

2.4 ***Testing and Inspection:*** Developer shall employ, at its own expense, a qualified independent testing company, approved by the Town Engineer, to perform all testing of materials or construction that may be reasonably required by the Town. Developer shall furnish certified copies of test results to the Town Engineer. At all times during construction of the Public Improvements, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer's cost. All materials and work must conform to the Civil Engineering Construction Plans. Any material or work not conforming to the Civil Engineering Construction Plans shall be promptly removed, repaired or replaced, at Developer's expense and to the satisfaction of the Town Engineer.

2.5 ***Performance Guarantee:*** To secure the construction, installation, improvement and completion of the Public Improvements, Developer shall furnish to the Town a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit "D"** in which the Town is designated as the beneficiary ("Performance Guarantee") in an amount equal to twenty-percent (20%) of the cost of such improvements, which cost shall be certified by Developer's professional engineer, licensed in the State of Colorado and approved by the Town Engineer. The Performance Guarantee shall be released after Initial Acceptance of such improvement.

3. **Private Improvements**

3.1 ***Pre-Construction:*** Prior to commencing construction of the Private Improvements, Developer shall submit a Site Development Plan to the Town. The Site Development Plan shall contain the proposed Private Improvements for the Development, including a plan for an irrigation system, landscaping, fencing, entry-way signage, street signs and posts, street lighting, parks and open space, trails, postal service boxes and school bus stop shelters. Landscaping and fencing shall be designed in accordance with the Town's landscape guidelines. Construction of the Private Improvements shall not commence until the Town provides written notice of approval of the Site Development Plan, with the exception of approval of any school bus shelters, which must be approved by the school district. Developer shall not thereafter modify the approved Site Development Plan without the written approval of the Town. The Town's review and approval of the Site Development Plan shall not limit or affect Developer's responsibility or liability for design, construction and installation of the Private Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to such design, construction and installation, other than negligent designs which are required by the Town over Developer's written objection. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Private Improvements. Developer shall also pay all applicable use tax due and owing to the Town.

3.2 ***Construction of Private Improvements:*** Upon satisfaction of the conditions set forth in Paragraph 3.1, Developer shall construct the Private Improvements at its own expense in accordance with the terms of this Agreement, the PUD Plat and the Final Plat, the Resolution, the Site Development Plan, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. All landscaping services shall be performed by a professional landscape architect or engineer. Unless otherwise approved by the Town in writing, all materials used for

constructing the Private Improvements shall be new and both workmanship and materials shall be of good quality.

3.3 ***Inspection:*** At all times during construction and installation of the Private Improvements, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer's cost. All materials and work must conform to the Site Development Plan. Any material or work not conforming to the Site Development Plan shall be promptly removed, repaired or replaced, at Developer's expense and to the satisfaction of the Town.

3.4 ***Completion of Private Improvements:*** Unless otherwise agreed in writing by the Town Administrator, the Private Improvements shall be completed no later than the date that the Public Improvements are completed, such completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the Town Administrator's written consent to the extension. The Town may, in its discretion, allow Developer to defer completion of the landscaping services between December 1 and March 1 of any given year provided that sufficient surety in the form of a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit "D,"** in which the Town is designated as the beneficiary, is provided to the Town.

4. **Dry-Utilities**

4.1 ***Utilities:*** Developer shall obtain all proper conveyances and arrangements for the installation and provision of the Dry Utilities to serve the Development. Developer shall provide proof of such conveyances and arrangements to the Town, which proof may be in the form of contracts for such services, no later than the date that the Public Improvements are completed.

4.2 ***Easements:*** All easements approved by the utility companies shall be submitted to the Town.

ACCEPTANCE OF SUBDIVISION IMPROVEMENTS

5.1 ***Initial Acceptance:*** Developer shall make written application to the Town Administrator for initial acceptance of the Subdivision Improvements ("Initial Acceptance") within thirty (30) days of the completion date of the Subdivision Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete. The written application shall include one set of reproducible "as built" drawings and an affidavit executed by Developer affirming that the Subdivision Improvements have been paid in full, certifying the final construction costs and including documentary evidence of the construction costs. If the Town Administrator requests, Developer shall provide lien waivers, or other acceptable assurance, from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the design, construction or installation of the Subdivision Improvements. The affidavit and lien waivers may be reviewed by the Town, but the Town assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided.

After the receipt of the written application, the Town Engineer shall use reasonable efforts to promptly inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to Initial Acceptance upon receipt of the Maintenance Guarantee. If the Subdivision Improvements are not satisfactory, the Town Engineer shall prepare a detailed written description of all Subdivision Improvements which are not in compliance with the Approved Plans, subject to any changes that have been approved by the Town and any changes that have been required by the Town as a result of any unforeseen engineering design issues. Such report shall be delivered to Developer. After curing the defects, Developer shall make a renewed written application to the Town for re-inspection of the Public Improvements, which written application shall contain the items set forth above. The Town Engineer shall thereafter use reasonable efforts to promptly re-inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to Initial Acceptance upon receipt of the Maintenance Guarantee.

5.2 *Maintenance Guarantee:* Prior to Initial Acceptance, Developer shall provide the Town with a maintenance guarantee in the form of a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit “D”** in which the Town is designated as the beneficiary (“Maintenance Guarantee”). The Maintenance Guarantee shall equal ten percent (10%) of the total cost of the Subdivision Improvements. The Maintenance Guarantee shall warrant and guarantee all expenses and costs for maintenance, repairs and replacements of the Subdivision Improvements until Final Acceptance. The Maintenance Guarantee shall be released after Final Acceptance of all of the Subdivision Improvements.

5.3 *Delivery of Initial Acceptance:* Upon satisfaction of the conditions set forth above in Paragraphs 5.1 and 5.2, the Town shall provide written notice of Initial Acceptance of the Subdivision Improvements to Developer. The Town may issue written notice of Initial Acceptance of the Subdivision Improvements prior to completion of certain of the less critical improvements, as determined and agreed-upon by the Town in its sole discretion. In which case, the Developer may be entitled to obtain building permits prior to completion of all the Subdivision Improvements, assuming satisfaction of the remaining terms of this Agreement and based on conditions otherwise set forth herein.

5.4 *Maintenance, Repair and Replacement:* Until Final Acceptance of the Subdivision Improvements, Developer shall promptly perform all maintenance and make all repairs and replacements of all defects or failures of the Subdivision Improvements at Developer’s expense. If, within twenty (20) days after Developer’s receipt of written notice from the Town requesting such maintenance, repairs or replacements, Developer shall not have undertaken with due diligence to make the same, the Town may make such maintenance, repairs or replacements at Developer’s expense and shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter or the Town may charge Developer for the costs thereof. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Maintenance Guarantee.

5.5 ***Final Acceptance:*** One (1) year after the Town's Initial Acceptance of the Subdivision Improvements, Developer shall make a written request to the Town Administrator for a final inspection of the Subdivision Improvements ("Final Acceptance"). If the Town Engineer determines that the Subdivision Improvements are free of defects in materials and workmanship and have been repaired and maintained to the extent required, the Town Administrator shall provide a written certification of completion and Final Acceptance. If the Town Engineer determines that the Subdivision Improvements are not free of defects in materials and workmanship and have not been repaired and maintained to the extent required, the Town Administrator shall issue a written notice of non-compliance specifying the defects. Developer shall take such action as is necessary to cure the noncompliance and, upon curing the same, provide a new written request to the Town Administrator for a final inspection of the Subdivision Improvements. Failure of the Developer to make a timely request for Final Acceptance shall not limit the Town's rights hereunder nor shall it limit the Town's right to utilize or operate the Public Improvements as the Town deems appropriate.

5.6 ***Homeowners Association:*** Prior to Final Acceptance and prior to the sale of lots or homes in the Development, Developer shall include the Development in the existing homeowners association for The Homes at Aspen Meadows, P.U.D. Developer shall provide the Town with proposed covenants, bylaws and articles of incorporation for the homeowners association. Upon written approval of the covenants, bylaws and articles of incorporation by the Town, the same shall be recorded with the Weld County Clerk and Recorder and the homeowners association shall thereafter be deemed to be established. The covenants shall be enforced by the homeowners association and the owners of the property in the Development.

5.7 ***Dedication and Maintenance of Subdivision Improvements:*** Upon Final Acceptance of the Subdivision Improvements: (1) the Public Improvements shall be owned, operated and maintained by the Town; (2) the Private Improvements shall be owned, operated and maintained, as appropriate and otherwise authorized and approved by the Town, by the Developer or the homeowner's association; and (3) the Dry-Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by the Developer, the homeowner's association or the appropriate public utility company.

WATER AND SEWER

6.1 ***Non-Potable Irrigation System:*** Developer shall install a non-potable irrigation system, which system shall be approved by the Town Engineer. The non-potable irrigation system shall irrigate both public and private green areas. Once the system is approved and operable, it will be dedicated to and operated by the Town.

6.2 ***Water Dedication:*** The following raw water rights shall be provided:

- a. Colorado-Big Thompson in the amount of .40 acre-feet per dwelling unit or commercial tap; or
- b. North Poudre in the amount of .10 shares per dwelling unit or commercial tap.

If it is determined by the Town that a commercial tap will use more than the amount of water required above, then the raw water requirement for that tap will be adjusted accordingly.

The transfer of raw water requirements to the Town shall occur prior to issuance of a building permit.

6.3 ***Water and Sewer Service:*** Upon dedication of the appropriate amount of water and satisfaction of the conditions of this Agreement, the Town shall provide water and sewer service to the Development.

BUILDING PERMITS

7.1 The Town shall not issue building permits or install water meters for the Development until: (1) the Final Plat has been recorded with the Weld County Clerk and Recorder; (2) Developer has paid all applicable fees and taxes due and owing to the Town; (3) Developer has received written notice of Initial Acceptance of the Subdivision Improvements; (4) meter and curb stop pass inspection; (5) Developer has included the Development within the homeowners association referenced in Paragraph 5.6 above; (6) Developer has transferred the raw water requirements to the Town; and (7) Developer is not in default of any terms of this Agreement.

7.2 Notwithstanding the foregoing, the Town may, in its sole discretion, issue building permits prior to completion of certain of the less critical Subdivision Improvements, as determined by the Town in its sole discretion, on the condition that such improvements be completed prior to the issuance of certificates of occupancy.

7.3 If at any time the Town determines that Developer is not in compliance with this Agreement, the PUD Plat, the Final Plat, the Resolution or the Approved Plans, the Town may withhold the issuance of building permits.

7.4 The Developer anticipates obtaining a total of fifty-five (55) building permits in the Development in the manner and within the time frame set forth in this Agreement.

OPERATION STANDARDS

8.1 The operation of construction equipment outside an enclosed structure shall be prohibited between the hours of 7:00 p.m. and, on weekdays, the hour of 6:00 a.m. or, on weekends and legal holidays, the hour of 7:00 a.m. The Town Administrator may, upon written application, alter the hours of operation for good cause by providing written notice to Developer.

8.2 The operation of construction equipment for the purpose of grading or constructing either surface improvements or underground utilities, either public or private, shall be prohibited between the hours of 8:00 p.m. and 6:00 a.m. on weekdays and 5:00 p.m. and 7:00 a.m. on legal holidays and weekends. The Town Administrator may, upon written application, alter the hours of operation for good cause by providing written notice to Developer.

8.3 Developer agrees to mow all weeds one (1) foot or taller growing within the Development. Developer further agrees to use the appropriate herbicide and undertake mowing of the property within the Development.

8.4 Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, dirt and mud caused by Developer's operation. Developer shall remove such waste material, rubbish, dirt and mud no less than weekly and, at the completion of the work, shall promptly remove all debris, waste materials, rubbish, dirt, mud, tools, construction equipment, machinery, building materials, trash containers, and portable toilets from the public right-of-way.

8.5 When the Town Engineer provides written notice that erosion, by wind or water, is likely to be an issue, Developer shall install temporary or permanent erosion control into the Development at the earliest practicable time. By way of explanation and without limitation, said control may consist of seeding of approved grasses, temporary dikes, gabions or other similar devices.

8.6 In the event that Developer fails to perform the work specified in Paragraphs 8.3, 8.4 or 8.5 within ten (10) days after receiving written notice from the Town, for the work specified in Paragraphs 8.3 and 8.4, the Town may, in addition to other remedies, perform the work required and charge Developer for said cost. Developer shall pay the Town for all costs incurred by the Town in the performance of the above said service within ten (10) days of the Town submitting an invoice for said services. If Developer does not remit the costs, in addition to other remedies, the Town may draw on the Maintenance Guarantee.

8.7 Developer hereby ensures that Developer's subcontractors shall cooperate with the Town's construction inspectors in all manners, including, but not limited to, by ceasing operations when winds are of sufficient velocity to create blowing dust which the Town, in its discretion, determines is hazardous to the public health and welfare.

8.8 Developer shall take all steps necessary to prevent its construction activities from damaging adjacent properties.

DEVELOPMENT STANDARDS

9.1 Developer shall comply with the requirements contained in the Annexation Agreement related to the Property, except as specifically amended by this Agreement.

9.2 Except as otherwise provided in this Agreement, the PUD Plat, the Final Plat, the Resolution or Approved Plans, Developer shall comply with the Eaton Municipal Code (to the extent applicable), zoning ordinances, subdivision regulations, landscape guidelines and, if operative with respect to the Development, the approved design guidelines.

9.3 Appropriate design standards must be met including, but not limited to, the following:

- A. All proposed multi-family areas and all other areas not planned for detached single family units must be the subject of a Site Development Plan to be reviewed and approved by the Town prior to any construction being performed.
- B. All off-street parking structures or pads shall be provided to the rear of the front setback. Driveways leading to the off-street parking may be constructed within the front setback and may also be used for parking.
- C. Interior sidewalks shall be a minimum of four (4) feet wide, four (4) inches thick and constructed of concrete.
- D. To provide for emergency vehicular access, no structure shall be located in excess of one hundred and fifty feet (150'), excluding cul-de-sacs, from a single point of vehicular access unless an approved temporary second point of vehicular access is provided.
- E. Landscape plan to be approved by the Town per areas shown on the Final Plat.

9.4 All plats and construction drawings shall be submitted in mylar, print, and digital form, which must conform to the Town's format and content requirements.

9.5 Developer shall take all necessary steps to prevent its construction activities from harming water quality, water bodies and wetlands. All drainage and holding ponds shall be kept free of standing water by whatever means possible including, but not limited to, pumping water out of any holding ponds.

LIABILITY, INSURANCE AND COST REIMBURSEMENT

10.1 ***Indemnification:*** Developer hereby agrees to indemnify and hold the Town, Town Officials, its employees, agents, representatives, insurers and self-insurance pool harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees and expenses, including attorney's fees, resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of Developer, its employees, agents, consultants, representatives or subcontractors, except to the extent caused by the negligence or willful misconduct of the Town. Developer shall promptly investigate, handle, respond to, and provide defense for and defend against any such liability, claims or demands at the sole expense of Developer. Developer also agrees to bear all costs, expenses and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent.

10.2 ***Insurance:*** Developer shall for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of the Subdivision

Improvements maintain such liability insurance including general liability, contractors liability, professional liability, comprehensive automobile liability and sufficient public liability insurance as will protect the Town, Town Officials, its employees, agents and representatives against any and all potential liability, claims, damage, demands, losses, and expenses which may be incurred or asserted pursuant to Paragraph 10.1 above. Liability insurance shall be in the minimum amount of three hundred fifty thousand dollars (\$350,000.00) for injury to one person, or nine hundred ninety thousand dollars (\$990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as may be amended. Whenever requested by the Town Administrator, Developer agrees to promptly submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and which show the Town, Town Officials, its employees, agents and representatives as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Development Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types. In addition to the insurance specified above, Developer shall maintain workers compensation insurance, if so required by law, and shall require its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of improvements to maintain workers compensation insurance in the amount required by law.

10.3 ***Drainage Liability:*** Developer shall indemnify and hold the Town harmless from any liability the Town may have on account of any change in the nature, direction, quantity or quality of drainage flow resulting from the Development. In addition, Developer shall reimburse the Town for any and all costs, fees and expenses, including attorney's fees, which the Town incurs in acquiring any rights-of-way or easements which the Town is required to acquire or condemn or which the Town is held to have acquired or condemned for drainage as a result of this Development. This provision shall survive Final Acceptance and the termination of this Agreement.

10.4 ***Tax Liability:*** Developer shall pay all outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the Town prior to or at the time of such dedication or conveyance, and shall indemnify and hold the Town harmless from any and all encumbrances, obligations or tax liability incurred prior to the dedication or conveyance to the Town. Any use tax due for construction materials shall be paid prior to construction of any improvements on the Property.

10.5 ***Cost Reimbursement to Town:*** Developer shall reimburse the Town for professional consultants, including, but not limited to engineers, testing companies and attorneys, engaged by the Town to process and complete the Development.

10.6 ***Colorado Governmental Immunity Act:*** Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the Town, Town Officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended.

DEFAULTS AND REMEDIES

11.1 A default by Developer shall exist if Developer fails to fulfill or perform any material obligation contained in this Agreement, the PUD Plat, the Final Plat, the Resolution, or the Approved Plans, or Developer fails to comply with the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. In the event of a default, the Town shall deliver written notice to Developer of such default and Developer shall have ten (10) days from receipt of such notice to cure the default. If the default is not of a type that may be cured within such ten (10) day period, Developer may provide written notice to the Town within such period that it is actively and diligently pursuing such cure and Developer shall thereafter have a reasonable time to cure the default, provided that Developer is at all times within that extended period actively and diligently pursuing a cure. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Maintenance or Performance Guarantee.

11.2 If the default relates to the improvement secured by the Performance Guarantee and the default is not timely cured, the Town may draw on the Performance Guarantee. If the default arises subsequent to Initial Acceptance and the default is not timely cured, the Town may draw on the Maintenance Guarantee. In addition, and without limitation, if the default is not timely cured, the Town may withhold approval of any or all building permits, certificates of occupancy, water meters or tap hook-ups for any area within the Development. Notwithstanding these rights and remedies, the Town may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity or pursuant to this Agreement. The Town's remedies shall be cumulative.

11.3 Should Developer default in any obligation under this Agreement, the Town may, in its discretion, complete such Subdivision Improvements at Developer's expense. The Town shall estimate the cost of such improvements and give notice to Developer to pay such cost estimate. The Town shall use such payment for said improvements and refund any money collected in excess of the actual cost of said improvements. Should payment not be made within thirty (30) days of such notice, the Town may assess the amount of the cost estimate, plus ten percent (10%) to defray the cost of collection as provided by state law, to the property in the Development and file a lien against the property, such lien to have priority over all liens except general taxes and prior special assessments and to be placed upon the tax list for the current year to be collected in the same manner as taxes are collected. The Town may file such lien at any time after said thirty (30) days while Developer is in default of this Agreement.

SPECIAL PROVISIONS

12.1 ***Scope of Agreement:*** This Agreement applies to and is binding upon the property described on **Exhibit "A."** The parties recognize and agree that under this Agreement, Developer has only obtained final plat approval for the Development, although Developer has previously obtained approval for the development of Phase I of the PUD, Phase II of the PUD and Phase III of the PUD under separate agreements. At the time of the execution of this Agreement, Developer anticipates constructing and installing the Subdivision Improvements for the Development.

(Developer has previously installed certain public improvements under a separate development agreement for the Phase I of the PUD, Phase II of the PUD and Phase III of the PUD.)

12.2 ***Additional Terms, Conditions or Provisions:*** The Additional Terms, Conditions or Provisions relating to the development of the lands within the PUD Plat generally, and to the Development specifically, are set forth in **Exhibit “B-4,”** which is attached hereto, incorporated herein by this reference, and made a part of this Agreement.

MISCELLANEOUS

13.1 ***No Waiver:*** Delays in enforcement or the waiver of any one or more breaches of this Agreement by the Town shall not constitute a waiver of any of the remaining terms or obligations.

13.2 ***Severability:*** If any provisions or parts of this Agreement are judged to be unenforceable or invalid, to the extent practicable, such judgment shall not affect, impair or invalidate the remaining parts of this Agreement, the intention being that the various parts and provisions hereof are severable.

13.3 ***Recording of Agreement:*** A Notice of this Agreement substantially in the form as shown on **Exhibit “E”** is to be recorded with the approved Final Plat and shall be a covenant running with and against all the property, property rights and improvements contained within the Development described in **Exhibit “A”** in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the property on notice as to the terms and obligations herein. No lots, tracts or parcels may be separately conveyed prior to recording such Notice and the Final Plat.

13.4 ***Binding Effect:*** Unless otherwise provided herein, this Agreement shall be binding upon Developer’s heirs, successors, assigns, transferees and any other person or entity acquiring or purchasing any interest in any of the property described in the attached **Exhibit “A,”** with the exception of a bona fide residential home buyer of a completed owner-occupied home.

13.5 ***Transfer or Assignments:*** In the event of a sale or transfer of any portion of the Development, except to a bona fide residential home buyer of a completed owner-occupied home, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless, prior to the transfer or the sale, a written agreement satisfactory to the Town delineating and allocating the various rights and obligations for the Subdivision Improvements has been approved and executed by the Town Board.

13.6 ***Title and Authority:*** Developer expressly warrants and represents to the Town that it is, or will be, the record owner of the Development and further represents and warrants that the undersigned has full power and authority to enter into this Agreement. Developer understands that the Town is relying on the representations and warranties contained herein in approving in entering into this Agreement.

13.7 **Notice:** All notices, consents, applications or other instruments provided for under this Agreement shall be deemed properly given and received: (1) when personally delivered and received, when sent by messenger service, or when forwarded by facsimile or email-delivery, but only upon confirmation of receipt of such facsimile or email; (2) on the next day after deposit for delivery with a nationally-recognized overnight courier service; or (3) three business days after deposit in the United States mail, by certified mail with return receipt requested, postage prepaid and addressed as follows:

TO DEVELOPER:

ASPEN MEADOWS DEVELOPMENT, LLC

c/o Corie Baessler
1620 Carriage Drive
Eaton, CO 80615
Facsimile: (970) 397-8283
Email: corie@cb-build.com

Timothy L. Goddard, Esq.
Hasler, Fonfara and Goddard LLP
125 South Howes Street, Sixth Floor
Fort Collins, CO 80521
Facsimile: (970) 493-9703
Email: timg@hfglawfirm.com

TO TOWN:

TOWN OF EATON

Attention: Town Administrator
223 1st Street
Eaton, CO 80615
Facsimile: (970) 454-3339
Email: gcarsten@eatonco.org

Avi S. Rocklin, Esq.
Law Office of Avi S. Rocklin, LLC
19 Old Town Square, Suite 238
Fort Collins, CO 80524
Facsimile: (970) 797-1806
Email: avi@rocklinlaw.com

13.8 **Costs and Attorney Fees:** If either party breaches this Agreement, the prevailing party shall be entitled to the reasonable costs and expenses, including attorney's fees, incurred in the enforcement of the terms, conditions and obligations of this Agreement, to the extent permitted by law. Nothing herein shall be construed to prevent or interfere with the Town's rights and remedies specified elsewhere in the Agreement.

13.9 **Vested Right:** The Final Plat shall have vested rights pursuant to §§ 24-68-101, *et seq.*, C.R.S., for a period of three (3) years from the date of this Agreement.

13.10 **Warranty of Developer:** Developer warrants that the Subdivision Improvements shall be installed in a good and workmanlike manner and in compliance with the Approved Plans, this Agreement, the PUD Plat, the Final Plat, the Resolution, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations and shall be substantially free of any defects in materials and workmanship.

13.11 **Governing Law and Venue:** This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and Municipal Code of the Town of Eaton. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, Colorado.

13.12 **No Presumption:** Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

13.13 **Entire Agreement:** This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

13.14 **Compliance with the Law:** Developer shall comply with all federal, state and local laws and regulations in the performance of the obligations under this Agreement.

13.15 **No Third Party Beneficiaries.** No person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services or materials for the Subdivision Improvements.

13.16 **Force Majeure:** Neither party shall be liable for a failure to perform hereunder if such failure is the result of force majeure, which shall mean causes beyond the reasonable control of a party such as acts of God, labor strikes, war, terrorism, fire or action or inaction of government authorities.

13.17 **Headings:** The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the parties have set their hands below on this _____ day of _____, 2017.

ASPEN MEADOWS DEVELOPMENT, LLC,
a Colorado limited liability company

By: _____
Corie Baessler, Manager

ATTEST:

By: _____
Secretary/Member

STATE OF COLORADO)
) ss.
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2017,
by _____.

WITNESS my hand and official seal.

My commission expires:

Notary Public

TOWN OF EATON, COLORADO,
a municipal corporation

By: _____
Mayor

ATTEST:

By: _____
Town Clerk

**PLANNED UNIT DEVELOPMENT AGREEMENT
FOR
THE TOWN OF EATON
(The Homes at Aspen Meadows – Phase IV)**

EXHIBITS

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EXHIBIT A:	Legal Description of the Development (Phase IV)
EXHIBIT B-1:	Copy of PUD Plat
EXHIBIT B-2:	Copy of Final Plat for Phase IV
EXHIBIT B-3:	Town Resolution Approving Final Plat
EXHIBIT B-4:	Additional Terms, Conditions or Provisions
EXHIBIT C:	Schedule of Public Improvements
EXHIBIT D:	Irrevocable Letter of Credit Form
EXHIBIT E:	Notice (Approval of Final Plat and Development Agreement)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY (Development)

The Homes at Aspen Meadows Fourth Filing, P.U.D., Town of Eaton, County of Weld, State of Colorado.

EXHIBIT B-1

PUD PLAT

(SEE ATTACHED)

EXHIBIT B-2

FINAL PLAT

(SEE ATTACHED)

EXHIBIT B-3

RESOLUTION APPROVING FINAL PLAT

(SEE ATTACHED)

EXHIBIT B-4

ADDITIONAL TERMS, CONDITIONS OR PROVISIONS

1. **NON-POTABLE IRRIGATION SYSTEM:**

Property owners within the Development shall pay for ongoing upkeep and maintenance of the non-potable irrigation system. The Town anticipates charging for the cost of the upkeep and maintenance along with the regular water bills to individual owners.

2. **STREETS:**

All regulatory and street name signs shall be provided and installed by the Developer as per a plan approved by the Town Administrator and Chief of Police.

3. **SEWER AND WATER LINE INSTALLATION:**

Developer shall comply with the Eaton Municipal Code and the Approved Plans with respect to the installation of sewer and water lines.

4. **DRAINAGE DESIGNS:**

Developer shall comply with the Approved Plans with respect to the drainage designs.

5. **RETENTION POND:**

Developer shall complete construction of the retention pond shown on the Civil Engineering Construction Plans to collect and manage stormwater runoff for the Development. The retention pond shall be constructed according to the Civil Engineering Construction Plans. Developer shall complete the final construction of the retention pond and install drainage pans prior to issuance of any building permit for the Development (this Phase IV of the PUD). Landscaping will be supplied and installed by the Town after Developer has completed the final phase of the construction of the retention pond.

EXHIBIT C

SCHEDULE OF PUBLIC IMPROVEMENTS

(SEE ATTACHED)

EXHIBIT D

FORM--IRREVOCABLE LETTER OF CREDIT

NAME OF ISSUING BANK_____

ADDRESS OF ISSUING BANK_____

Town of Eaton
223 1st Street
Eaton, CO 80615

ATTENTION: TOWN OF EATON ATTORNEY AND TOWN ADMINISTRATOR

We hereby establish, at the request of and for the account of _____, this Irrevocable Letter of Credit in favor of the Town of Eaton in the amount of \$_____. The purpose of this Letter of Credit is to secure performance of a Subdivision Development and Improvement Agreement between the Town of Eaton and _____, dated _____ of _____, 20_____.

You are hereby authorized to draw on sight by drafts or written demands up to the aggregate amount of \$_____. The sole condition for payment of any demand made or draft drawn against this Irrevocable Letter of Credit is a written request for payment made in the form of a letter on the Town's stationery signed by the Town Administrator.

Partial and multiple drawings are permitted hereunder.

We hereby agree with the Town of Eaton and its drawers, endorsers, and bona fide holders of demands made or drafts negotiated under this Letter of Credit that the same shall be duly honored upon presentation and delivery of the documents as specified above.

This Irrevocable Letter of Credit is not transferable.

This Irrevocable Letter of Credit shall be for a twelve (12) month term from the date of execution hereof. It is a condition of this Irrevocable Letter of Credit that it shall be automatically renewed, without amendment, for additional periods of one year each from the present or any future expiration date, unless, at least sixty (60) calendar days prior to the effective expiration date, we notify you in writing delivered by certified U.S. mail, return receipt requested, Attention: Town Administrator, that we elect not to renew this Irrevocable Letter of Credit for any further additional period. Upon your receipt of our written notification of impending expiration, you may draw the unused balance of this Irrevocable Letter of Credit upon your written demand or your sight draft in the form set forth above.

With the exception of C.R.S. §4-5-108(b) concerning the period of time in which to honor or reject a draft, demand or credit, this Letter of Credit shall be governed and construed in accordance with the

laws of the State of Colorado. In the event of a conflict between the provisions of the Colorado Uniform Commercial Code and the provisions hereof, the provisions hereof shall control.

Signed this _____ day of _____, 20____.

Issuing Bank: _____

By: _____

Officer's Title: _____

Address: _____

STATE OF _____)
) ss.
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this _____ day of _____,
20_____, by _____ as the _____ of _____.

WITNESS my hand and official seal.

My commission expires:

Notary Public

EXHIBIT E

NOTICE

Please take notice that on the ____ day of _____, 2017, the Town Board of the Town of Eaton approved the Final Plat for the development known as The Homes at Aspen Meadows Third Filing P.U.D., which development was submitted and processed in accordance with the Town of Eaton's Municipal Code. In conjunction therewith, the Town Board also approved a Development Agreement dated _____, 2017, between the Town Eaton and the Developer, pursuant to and under which certain rights and obligations of the Developer will pass on to subsequent owners, heirs, assigns and transferees of the below-described property. The Development Agreement is on file and may be reviewed in the office of the Town Clerk of the Town of Eaton. The subject property for which such Development Agreement applies is described as follows:

LEGAL DESCRIPTION ATTACHED

DATED this ____ day of _____, 2017.

Town Clerk

Town Administrator