The Town of Eagle

Box 609 • Eagle, Colorado 81631
(970) 328-6354 • Fax 328-5203

Meetings:
2nd and 4th Tuesdays

CERTIFICATE OF RECOMMENDATION

TO:	Board of Trustees
FROM:	Department of Community Development
DATE:	March 5, 2014
PROJECT NAME:	Haymeadow Annexation, Planned Unit Development and Subdivision
FILE NUMBERS:	AN11-01 (Annexation), PUD13-02(Zoning Plan (ZP) and Development Plan (DP); S13-01(Sketch Plan (S) and Preliminary Plan (PP)); and RZ13-01
APPLICANT:	Ric Newman, Abrika Properties, LLC
EXHIBITS:	Exhibit A – Jon Stavney's Memo Exhibit B – Haymeadow Summary Sheet Exhibit C – Draft Annexation and Development Agreement Exhibit D – BBC Fiscal Response – Feb. 10, 2014 Exhibit E – Neighborhood A-1 Density Revisions Diagram
PUBLIC COMMENT:	Exhibit 21 – Newspaper Article (Feb 19)

APPLICABLE SECTION(S) OF MUNCIPAL CODE: Section 4.06, Section 4.07 Section 4.11, Section 4.12 of Land Use and Development Code

GUIDING DOCUMENTS:	Eagle Area Community Plan, Eagle Area Open Lands Conservation Plan, Eagle Land Use and Development Code
STAFF CONTACT:	Tom Boni, Town Planner

LOCATION: 660 Acres east of the Pool and Ice Rink and north of Brush Creek Road.

REQUESTS:

1. Annexation of entire 660 acre property
2. Combined PUD Zoning Plan and Development Plan Review of 837 dwelling unit Planned Unit Development on 660 acres
3. Combined Subdivision Sketch and Preliminary Plan review of entire property with specific residential lots identified in Neighborhood A-1 planned as the first phase of this Planned Unit Development.
4. Zone Change Review of entire property from Resource (Eagle County) to Residential Planned Unit Development (Town).
5. Site Specific Development Plan Approval granting vested property rights for a 20 year period is being requested.

BACKGROUND:

Over the last three months the Trustees have reviewed a series of topics pertinent to this application including:

1. General Overview
2. PUD Guide
3. Open Space
4. Parks
5. Trails
6. Wildlife
7. Affordable Housing (LERP)
8. Geology
9. Ownership and Maintenance Matrix
10. Traffic Report/Road Improvements
11. Utilities
12. Fiscal Analysis
13. Rough Draft Metro Service Plan
14. Water Supply
15. Applicant's Response to Off Site Road Costs
16. Adequate Public Facilities
17. Phasing Plan
18. Fire District Request for Land and Impact Fees

At this seventh hearing on March 5, the following topics are scheduled:

TOPIC 1: Draft One – Annexation and Development Agreement

TOPIC 2: Reconsideration of Neighborhood A-1 plan to accommodate 14 additional single family homes.

DISCUSSION:

At the hearing on February 25, there was some uncertainty regarding the impact on the proposed School Parcel and proposed Recreation Parcel from the applicant's request for a 160 foot wide Neighborhood A-1 encroachment into these parcels.

Following the meeting the staff and applicant have determined that there would be a reduction of the School Parcel of 2.35 acres and a reduction to the Park parcel of 1.22 acres. The new acreages would be 16.02 acres for the School Parcel and 16.71 acres for the Recreation Parcel.

Further discussions with the applicant, staff and school district have resulted in a plan to combine these two parcels into one parcel identified for both school and recreation purposes. This provides better flexibility for the Town to provide the District with the land needed for whatever facility the District ultimately decides to construct. An IGA between the School District and Town will be prepared related to this intent to dedicate land for school purposes. The approximate size of this combined parcel is 32.73 acres.

STANDARDS AND REQUIREMENTS:

Relative to an evaluation of an Annexation Petition, the Trustees have considerable latitude in factors to consider and should use the Eagle Area Community Plan (Plan) as the general guide. Chapter 10 of the Plan emphasizes the need to address the need for affordable housing. Chapter 13 includes a policy that new growth pays its own way to the degree possible. The Chapter also

states that the Town must be exceptionally diligent in determining what mitigation measures are appropriate when new development is approved.

PROCESS

March 11

1. PUD Guide Follow-up
2. Annexation and Development Agreement (Two)

Objectives:

a. Final comment on PUD Guide
b. Board direction on final terms for Annexation and Development Agreement
c. Direction to prepare necessary resolutions and ordinances

March 25

1. Staff Certificate of Recommendation
   a. PUD Zoning Plan and PUD Development Plan
   b. Subdivision Sketch Plan and Subdivision Preliminary Plan
   c. Rezoning
   d. Annexation

2. Deliberations and Vote on all Applications

If we do not receive final comment on March 11, then the schedule will require that the Board provide final direction for the preparation of resolutions and ordinance for a vote on April 8 prior to the new trustees being sworn in.

DISCUSSION AND ANNEXATION AND DEVELOPMENT AGREEMENT

APPLICANT PRESENTATION OF NEIGHBORHOOD A-1 PLAN

PUBLIC COMMENT:

STAFF RECOMMENDATION:

Recommend continuance of all files; Annexation, PUD Zoning Plan/Development Plan); Subdivision Sketch/ Preliminary Plan; and Rezoning Applications to March 5, 2014. (AN11-01, PUD13-02, S13-01, and RZ13-01) to March 11.

BOARD OF TRUSTEES:

1. Public Comment
2. Questions for Applicant
3. Questions of Staff
4. Trustee Comment

The Town of Eagle

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EXHIBIT A

Meetings:
2nd and 4th Tuesdays

Date: March 4, 2014

From: Jon Stavney, Town Manager

To: Eagle Town Board

Re: Haymeadow PUD Annexation and Development Agreement Memo

In preparing the board for a vote on March 25th, staff is seeking a direction from the town board on all remaining "major negotiation points" at the March 5th and March 11th meetings. Attached, you will find a **Haymeadow PUD – TBOT Summary Sheet**, intended to be a "one pager" summarizing the deal as requested by the board this past meeting.

The other documents in this packet include:

1. a planning department staff report detailing process
2. a table of contents for the Agreement
3. a Current draft of the Annexation and Development Agreement itself

All the e-mails, testimony, power points and working documents in various binders that got us to this point are each part of the public record on the file, but I want to be very clear that none of that matters as much as the **Annexation and Development Agreement** which ultimately and effectively acts as the governing contract stating the obligations and responsibilities binding the town and developer. Clarity in this document will guide the parties through the big picture deal for the next 10 to 20 years and will be the governing document over any disputes.

The second most significant document in the deal is the **PUD Guide** which establishes the land use and density permitted on the property. Staff and the applicant have made revisions of this document based on your last review and will seek your final direction on the PUD Guide on March 11th.

A third key document is the **Metro District service plan** which cannot be brought before the board for a vote until the annexation is effective following the 30 day challenge period. Ed Sands recently clarified to the team that this is per state statute. Staff has independent counsel preparing for the "next" board which will hear and vote on the matter.

As requested by the board at the last hearing, staff will prepare all other relevant materials for the PUD Zoning and Subdivision Sketch plan **at the same hearing** as the Annexation, PUD Development Plan and Subdivision Preliminary Plan in preparation for the vote on March 25th.

Some documents which will be prepared after the vote on annexation include: the lease back agreement for the raw water system and agricultural irrigation, modifications of the Brush Creek Management Plan, the Raw Water System Management Plan. These are intended to be finalized prior to final platting of the subdivision.

Ideally, we would get a vote from the board to "draw up the documents" as discussed and approved by the board on March 11th so that staff can work with the applicant on pulling together the many exhibits and final maps, ordinances and resolutions for your approval on March 25th. If we don't get clear direction and continue significant negotiations between the board and applicant into the March 25th meeting, then we are in the awkward situation of preparing for and having that vote at the beginning of the April 8th meeting just before swearing in the new board members.

Reading the Agreement: Board Members should understand and be comfortable with the language in the Development and Annexation Agreement, especially those "moving parts," "negotiated sections," whatever you want to call them which staff intends to highlight on the March 5th walk-through of the document. It is most important that the board see that staff and the applicant have expressed board intent in those major negotiating points.

That said, there is quite a bit of the document which town staff considers to be **boiler plate** and non-negotiable either because it was in the Eagle Ranch agreement and has worked over time (this was the agreed upon base language of the agreement by staff and the applicants legal counsel), language which was labored over in agreements after or during the Eagle Ranch and ERS years (engineering related language about infrastructure standards, for instance), or because it has come directly from adopted Town Code. I would advise that these items at this point of the process not be "re-opened" by the board.

EXHIBIT

tabbies

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Haymeadow PUD --TBOT Summary Sheet

837 Units on 660 acres = .78 units/acre

Community Benefits	Acreage	Neighborhood	Value	Notes	ADA Section
			italics=est, ***bold=cash***		
Open Spaces + parks total acreage	**368 acres**	A,B,C,D		348 pf 660 acres in OS	
Passive Uplands	included	A,B,C,D		Haymaker & other Trails access	
Southern Agricultural Buffer	included	D		Brush Creek Corridor EACP	
Ag / Wildlife Corridor	included	D		1000' when combined	
Wetlands passive park	included	A		Brush Creek Corridor EACP	
Willow and other open corridors	included	A,B,C,D			
Trailhead Park and amenities	included	A		20 acres, constructed by Devloper	
Recreation Planning Site	16 acres	A		52 total planning acres with P&Ice site	
School Land Dedication	10 to 18 acres			52 total planning acres	
Fire Station Dedication	1.6 acres	A		with accellerated Impact Fees for Station	
Constructed Improvements					
LERP	84 Units	A,B,C			
Pavilion		A		Larger than current pavilion	
Road miles on site	11.6 miles	A		replacement with RETT, ROW= 15 acres	
Paved and Soft Path miles	11 miles	A,B,C,D		estimated mix of soft to paved TBD	
Water Tank, Water Distribution System		A		Tank with A	
Raw Water System		A,B,C		including lakes & waterfeatures	
Wastewater and stormwater dist system		A,B,C,D			
Pre-Paid Water Plant Investment Fee		A	**$3,000,000**	Capped per Town Code	
Off Site Improvements					
Highway 6 Planning funding		A	**$700,000**	Capped per negotiation	
Brush Creek Road Extension	some ROW	5 years	**$3,000,000**	w/in 5 years (vs 30) scope defined, no cap	
Street Impact Fees		A,B,C,D	**$670,000**	nearly covers town obligations for	
Full Water Rights Dedication to Town		A		long term source security	
Real Estate Transfer Tax Assessment	0.6	A,B,C,D	*$12,000,000*	***Estimated by Ric***	
Impact Fees per Code EMS		A,B,C,D			
Accellerated Impact Fees, Fire		A	**$900,000**		
Estimated Use Tax Collection		A,B,C,D	*$7,000,000*	***Estimated by BBC***	

Recitals 28-Feb-14

Section 1 Definitions and General Provisions

1.1. Definitions
1.2. Covenants
1.3. Term
1.4. Final Approval
1.5. Zoning
1.6. Cooperation in Defending Legal Challenges
1.7. Effect of Termination
1.8. Amendment of Agreement
1.9. Issuance of Building Permits
1.10. Enforcement of Design Guidelines and PUD Guide
1.11. Scope of this Agreement

Section 2 Condition Subsequent

Section 3 Annexation

3.1. Annexation
3.2. Conditions Precedent
3.3. Failure of Conditions
3.4.

Section 4 Vested Property Rights

4.1. Permitted Uses/Design Standards
4.2. Vesting of Property Rights
4.3. Property Rights Vested
4.4. Limitation of Vested Property Rights
4.5. No Obligation to Develop

Section 5 Development

5.1. General Description
5.2. Phasing Plan
5.3. Compliance with Current Regulations
5.4. Start of Construction: Completion of Construction

Section 6 Adequate Public Facilities

6.1. Determination of Adequacy
6.2. Expiration of Determination of Adequacy
6.3. Future Determination of Adequacy

Section 7 Development Impact Fees

7.1. Development Impact Fees

	7.2.	Waiver of Righrs to Challenge Fees
Section 8	Water and Wastewater Services	
	8.1.	Water Rights and Water System
	8.2.	Provision of Treated and Irrigation Water Services
	8.3.	Construction of Municipal Water Distribution System
	8.4.	Construction of Raw Water Irrigation Distribution System
	8.5.	Water Plant Investment (Tap) Fee and Prepayment of Deposit
	8.6.	Provision of Wastewater Treatment Service
	8.7.	Construction of Wastewater Collection System
	8.8.	Plant Investment Fees and Related Charges-Computation and Payment
	8.9.	Waiver of Right to Challenge Fees
Section 9	Construction and Installation of On-Site Public Improvements	
	9.1.	General Improvements
	9.2.	Perimeter Fence
	9.3.	Brush Creek Road Fence
	9.4.	Raw Water Irrigation system to the School/Recreation Parcel
	9.5.	Utility Service to the Fire Station Parcel
	9.6.	Recreation Path Connection to Existing Pool and Ice Rink Facility
	9.7.	Recreation Trail or "Sprin Trail"
	9.8.	Wetlands Restoration and Enhancement
	9.9.	Sylvan Lake Road Extension to Brush Creek Road
Section 10	Construction and Installation of Off-Site Public Improvements	
	10.1.	Brush Creek Road Extension
	10.2.	Contribution to US Highway 6 Study
	10.3.	Sylvan Lake Road/Meadowlark/Brush Creek Road
	10.4.	Recreation Path Connection to Existing Pool and Ice Rink Facility
Section 11	Standards for Construction of Public Improvements	
	11.1.	Construction of Improvements
	11.2.	Construction Operations Plan
	11.3.	Access to Adjacent Lands
	11.4.	Warranty by Developer and Metropolitan District
	11.5.	Approval by Town's Engineer
	11.6.	Provision of "As Built" Drawings

	11.7.	Conveyance of Public Improvement
	11.8.	Improvements Required Prior to Issuance of Building Permits and Temporary Certificates of Occupancy
Section 12	Performance Guarantees	
	12.1.	Public Improvements and Other Required Development Improvements
	12.2.	Reduction in Security
	12.3.	Delivery of Performance Guarantee by Developer and/or District
	12.4.	Letter of Credit Standards: Payment Upon Default
	12.5.	Payment of Performance Surety Bond Upon Failure to Perform
	12.6.	Partial Release of Performance Guarantee
	12.7.	Full Release of Performance Guarantee
	12.8.	Notice of Failure to Complete Construction
	12.9.	Power of Attorney Granted by Developer and District
	12.10.	Increase in Amount of Performance Guarantee
	12.11.	Cost Estimate Not Binding
	12.12.	Attorney Fees
Section 13	Indemnification and Insurance	
	13.1.	Indemnification by Contractors
	13.2.	Insurance Required
	13.3.	Nature and Amounts of Insurance
	13.4.	Indemnification by Developer and District
	13.5.	Governmental Immunity
Section 14	Dedication and Improvement of Parks and Other Public Lands	
	14.1.	Brush Creek Road Right-of-Way
	14.2.	Upland Open Space
	14.3.	Fire Station Property
	14.4.	Haymaker Trail
	14.5.	Wildlife Corridor
	14.6.	Willow Tree Corridor
	14.7.	Ouzel Park
	14.8.	Wetland Open Space
Section 15	School/Recreation Land Dedications	
Section 16	Local Employee Residency Program	
Section 17	Payment of Street Improvement Recapture Fees to West Eagle Ranch LLC	

Section 18 Wildlife Protection

18.1. Wildlife Corridors

Section 19 Disturbance of Open Space Areas

19.1. Unplatted Areas
19.2. Designated Open Space Areas

Section 20 Mail Delivery

Section 21 Use of Chemicals

Section 22 Open Space Management Plan

Section 23 Transfer Assessment Covenant

23.1. Transfer Assessment Covenant

Section 24 Maintenance of Common Areas, Open Space and Development Improvements

Secttion 25 Reimbursement of Costs

25.1. Development Review Costs
25.2. Inspection Costs

Section 26 Default; Remedies; Termination

26.1. Default by Town
26.2. Default by Developer
26.3. Notices of Default
26.4. Remedies

Section 27 Miscellaneous Provisions

27.1. Voluntary Agreement
27.2. Recordation of Agreement
27.3. Enabling Ordinances Required
27.4. Attorney Fees
27.5. Complete Agreement
27.6. Authorization
27.7. Notices
27.8. No Additional Annexation Conditions Imposed
27.9. Waiver of Defects
27.10. Colorado Law Applicable
27.11. Jurisdiction of Courts

27.12.	Districts' Performance of Developer's Obligations
27.13.	Waiver
27.14.	Authorization
27.15.	Representations of Town Officials
27.16.	Covenants
27.17.	Time of the Essence
27.18.	Rights of Persons not a Party
27.19.	Binding Upon Successors, Assignees
27.20.	Developer's Right to Assign
27.21.	Town's Right to Assign
27.22.	Counterparts
27.23.	Amendments, Waivers and Consents
27.24.	Provisions Deemed Severable
27.25.	No Waiver of Immunity
27.26.	Execution of Other Documents
26.27.	Recordation of Agreement

HAYMEADOW PUD
EAGLE, COLORADO

APPROVAL OF THIS PLAN CREATES A VESTED PROPERTY RIGHT PURSUANT TO SECTION 24 -68 -103, C.R.S., AS AMENDED

DRAFT- V5– prepared by Ed Sands, Eagle Town Attorney – 3/4/2014

AGREEMENT RELATING TO THE ANNEXATION AND DEVELOPMENT OF PROPERTY KNOWN AS THE HAYMEADOW PARCEL A, PARCEL B AND PARCEL C ADDITIONS TO THE TOWN OF EAGLE, COLORADO, ALSO KNOWN AS THE HAYMEADOW PUD,

THIS ANNEXATION AND DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 2014, by and between the TOWN OF EAGLE, COLORADO, a Colorado municipal corporation (the "Town") whose address is P.O. Box 609, Eagle, CO 81631, and ABRIKA PROPERTIES, LLC a Florida limited liability company, ("Developer") whose address is _____.

RECITALS

A. Abrika Properties LLC, owns one hundred percent (100%) of the real property described in Exhibit "A", attached hereto and incorporated herein (the "Property"); and

B. On or about _____, Developer submitted three (3) Petitions for Annexation of the Property to the Town Clerk of the Town of Eagle, Colorado (the "Annexation Petitions"); and

C. On _____, the Board of Trustees of the Town (the "Board") adopted Resolutions No. ___, ___ and ___, wherein it determined that the petitions for the proposed annexations complied with Section 31 -12 -107, C.R.S., as amended; and

D. On_____, _____, and _____, the Board conducted public hearings and on _____, 2014. The Board adopted Resolutions No. ___, ___ and ___, wherein it determined the proposed annexations comply with Sections 31-12-104 and 31-12 -105, C.R.S., as amended, or such parts thereof as may be required to establish eligibility under the terms of the Municipal Annexation Act of 1965, as amended, Sections 31-12-101, C.R.S., *et seq.*, and

E. The Property is presently zoned Resource in Eagle County; and

F. The Town and Developer desire to enter into an agreement setting forth more fully the terms of the annexation and development of the Property; and

G. Developer has submitted to the Town a proposed Subdivision Sketch Plan, Subdivision Preliminary Plan, PUD Zoning Plan and PUD Development Plan; and

H. Developer desires to develop the Property as a Planned Unit Development ("PUD") to be known as Haymeadow PUD, which shall be entitled to a total of 837 dwelling units together with accessory dwelling units ("ADUs") as permitted by the Municipal Code and as more specifically set forth in the Subdivision Sketch Plan, Subdivision Preliminary Plan, PUD Zoning Plan, and

PUD Development Plan, and this Agreement (collectively referred to as the "Development Plan"); and

I. If the Property is annexed to the Town, the Town will have the authority to zone the Property and approve the subdivision of the Property in accordance with this Agreement, the Town's Master Plan, the PUD Development Plan, the Subdivision Preliminary Plan, and the applicable Town requirements and policies; and the Town will have the authority to govern development of Haymeadow in accordance with applicable State law, the Municipal Code, this Agreement, the Development Plan, and other applicable Town requirements and policies; and

J. Development of Haymeadow will require large investments in infrastructure improvements and public facilities (including off-site improvements), including, without limitation, roads, drainage facilities, water lines, wastewater lines, parks, open space, recreation facilities and municipal facilities to serve the needs of the Development and the Town. Completion of these improvements and facilities will require substantial investments by Developer and/or the "Metropolitan District" (as defined in Section 1.1) and the Town. Such investments can be supported only if there are assurances that the development of Haymeadow, once approved by the Town, will be allowed to proceed to ultimate completion as provided in this Agreement; and

K. The proposed PUD fulfills the purposes of a planned unit development as set forth in Section 4.11.020 of the Municipal Code and is in conformance with the Municipal Code and the Town's goals, policies and Master Plan, including the Eagle Area Community Plan (2010). The Town desires to annex the Property in order to provide for orderly growth in and around the Town; and

L. The legislature of the State of Colorado adopted Sections 24-68-101, *et. seq.* of the Colorado Revised Statutes (the "Vested Property Rights Statute") to provide for the establishment of vested property rights in order to ensure reasonable certainty, stability and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning. The Vested Property Rights Statute authorizes the Town to enter into development agreements with landowners providing for vesting of certain property development rights or limiting the vesting of these rights; and

M. Consistent with the Vested Property Rights Statute, Chapter 4.17 of the Municipal Code (the "Vested Property Rights Regulations") authorizes the Town to enter into development agreements with landowners and other qualified applicants providing for the vesting of property development rights or limiting the vesting of such rights; and

N. Development of the Property in accordance with this Agreement will provide for orderly growth in accordance with the policies and goals set forth in the Town's Master Plan, including the Eagle Area Community Plan (2010), ensure reasonable certainty, stability and fairness in the land use planning process, stimulate economic growth, secure the reasonable investment backed expectations of Developer, foster cooperation between the public and private sectors in the area of land use planning, and otherwise achieve the goals and purposes for which the Vested Property Rights Statute and the Vested Property Rights Regulations were enacted. In exchange for these benefits and the other benefits to the Town contemplated by this Agreement, together with the public benefits served by the orderly development of the Property, Developer desires to

receive the assurance that it may proceed with development of the Property pursuant to the terms and conditions contained in this Agreement, and

O. The Town has enacted Chapter 4.14 of the Eagle Municipal Code, Assurance of Adequate Public Facilities ("APF Regulations" as defined in Section 1.1), for the purpose of adopting a program to ensure that public facilities needed to support new development meet or exceed adopted level of service ("LOS" as defined in Section 1.1) standards; to ensure that no development approval is granted or issued which would cause a reduction in the LOS for any public facilities below the adopted LOS standards approved by the Town, to ensure that adequate public facilities needed to support new development are available concurrent with the impact of such development or use, and to establish uniform procedures for the review of the adequacy of public facilities needed to service new development; and

P. The Town and Developer mutually agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town upon the Developer and its successors in connection with the acceptance and favorable action on the Developer's Annexation Petitions; the Town recognizing and reciting that such matters are necessary to protect, promote and enhance the public welfare; and

Q. The Parties agree that it is desirable for the Developer to annex the Property to the Town.

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

SECTION 1.
DEFINITIONS AND GENERAL PROVISIONS

1.1. Definitions.

1.1.1. "Affiliate" means any Person directly or indirectly controlling, controlled by, or under common control with, a Person or a blood relative or spouse of such Person, if such Person is a natural person. Control, controlling, controlled by and under common control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

1.1.2. "Agreement". This Annexation and Development Agreement between Developer and the Town.

1.1.3. "Annexation Petitions". As defined in Recital B above.

1.1.4. "APF Regulations". The Town's regulations regarding assurance of adequate public facilities, as set forth in Chapter 4.14 of the Municipal Code in effect as of the Effective Date and any amendments thereto, unless otherwise provided in this Agreement.

1.1.5 "Challenge". As defined in subsection 1.4 below.

1.1.6 "Completion of Construction". Means the installation and completion of all public improvements and other required Development improvements and approved by the Town's Engineer in accordance with subsection 11.5 of this Agreement required for the entire Haymeadow Planned Unit Development.

1.1.7. "Board". The Board of Trustees of the Town of Eagle, Colorado.

1.1.8. "Declaration. Any recorded instruments, however denominated, that create a common interest community in accordance with the Colorado Common Interest Ownership Act, including any amendments to those instruments and also including, but not limited to, plats and maps.

1.1.9. "Design Review Board". As defined in Section 1.9 below.

1.1.10. "Design Guidelines". The design guidelines to be prepared by Developer pursuant to the Declaration and approved by the Town, which shall establish architectural design, landscape design and site design standards for the Development.

1.1.11. "Determination of Adequacy". The determination by the Town pursuant to the APF Regulations that each Public Facility will be available concurrent with the impacts of the proposed Development at the Existing LOS Standards as determined by the Town in connection with the approval of the PUD Development Plan and the PUD Zoning Plan, and which shall apply to all future development approvals within Haymeadow, as set forth in Section 6 of this Agreement.

1.1.12. "Developer". Abrika Properties, LLC, a Florida limited liability company, and it successors and assigns.

1.1.13. "Development" or "Haymeadow" or "Haymeadow PUD". The Residential Planned Unit Development project to be developed on the Property as generally described in subsection 4.1 below.

1.1.14. "Development Permit". Means a permit processed in accordance with Chapter 4.06 of the Municipal Code in regard to multi-family developments within Haymeadow.

1.1. 15. "Development Plan". Collectively, the Subdivision Sketch Plan, dated _____; Subdivision Preliminary Plan, dated _____; PUD Zoning Plan, dated _____; and PUD Development Plan, dated _____, as finally approved by the Town Board for the Property, which together with this Agreement shall constitute "site specific development plans" establishing vested property rights in accordance with the Vested Property Rights Statute, the Vested Property Rights Regulations, and as limited by this Agreement.

1.1. 16. "Effective Date". As defined in subsection 1.3 below.

1.1. 17. "Existing LOS Standards". The Level of Service standards for particular Public Facilities adopted by the Town as part of its APF Regulations and in effect as of the Final Approval.

1.1. 18. "Final Approval". As defined in subsection 1.4 below.

1.1.19 "Haymeadow LERP Housing Plan" means the plan submitted by the Developer as approved by the Town Board pursuant to Section 4.04.120 of the Municipal Code, attached hereto as Exhibit _____, and incorporated herein by this reference.

1.1.20 "Legal Challenge Period". As defined in subsection 1.4 below.

1.1.21. " LERP". Means the Local Employee Residency Program adopted by the Town for local employee housing pursuant to Section 4.04.120 of the Municipal Code in effect as of the Effective Date, as adjusted by the Town from time to time.

1.1.22. "LERP Units". Means those residential units subject to the LERPas modified by the Haymeadow LERP Housing Plan approved by the Town Board.

1.1.23. "LOS" or " Level of Service". Means an indicator of the extent or degree of service provided by, or proposed to be provided by, a Public Facility based upon and related to the operational characteristics of the Public Facility or the capacity per unit of demand for each Public Facility.

1.1.24. "Metropolitan District". The Haymeadow Metropolitan District to be created as set forth in Section 2 below. The parties acknowledge that there may be other metropolitan districts formed within Haymeadow for purposes of financing, but that the reference herein to Metropolitan District refers only to the Haymeadow Metropolitan District, which shall be the operating district for Haymeadow.

1.1.25. "Municipal Code". Means the Eagle Municipal Code, the Town's codification of its ordinances as in effect from time to time.

1.1.26. "Party" or "Parties". Means the Developer or the Town, and their respective successors and assigns, singularly or in combination.

1.1.27. "Property". As defined in Recital A above.

1.1.28. "Public Facility" or "Public Facilities". Capital improvements provided by the Town, another governmental entity, or provided by the Developer and dedicated or conveyed to the Town or another governmental entity, including, but not limited to, facilities for providing water, wastewater, fire protection, emergency services, public schools, parks and transportation facilities which are required by the APF Regulations to be adequate and available as a condition of approval by the Town of applications for Subdivision Final Plats within the Development during the Term.

1.1.29. "Public School Dedication". The dedication of land, or cash in lieu thereof, required by the Town to be made by a developer of land proposed for residential development, pursuant to and in accordance with the formula set forth in Section 4.13.065 of the Municipal Code in effect as of the Effective Date.

1.1.30. "PUD Zoning Plan". The first step in the Town's review of the application for PUD zoning for the Property establishing zoning, densities, uses, and their general locations within the

Development, to be approved by the Town pursuant to the requirements and procedures set forth in Chapter 4.11 of the Municipal Code in effect as of the Effective Date.

1.1.31. "PUD Development Plan". The second step in the Town's review of the application for PUD zoning for the Property, to be approved by the Town pursuant to the requirements and procedures set forth in Chapter 4.11 of the Municipal Code in effect as of the Effective Date.

1.1.32 "PUD Guide". The PUD control document approved by the Town in conjunction with the PUD Zoning Plan and the PUD Development Plan.

1.1.33. "Start of Construction", "Start Construction" or "Starts Construction". Means the visible commencement by the Developer or the Metropolitan District of actual, substantial, physical construction of public improvements serving lots in the first phase of the Development and , obtaining all required permits and licenses.

1.1.34. "State" means the State of Colorado.

1.1.35. "Street Improvement Fee". The fee structure adopted by the Town, as set forth in Section 4.13.185(D)(1) of the Municipal Code as of the Effective Date to ensure that the Town's street facilities needed to support new development meet or exceed the LOS standards established by the Town for public streets, as adjusted by the Town from time to time in accordance with the methodology contained in the Town of Eagle Transportation Study (1997) prepared by Matthew J. Delich, P.E.

1.1.36. "Subdivision Final Plat" means the final step in the subdivision process as further described in Section 4.12.010 (c) of the Municipal Code.

1.1.37. "Subdivision Preliminary Plan". The preliminary plan for the Property, to be approved by the Town pursuant to the requirements and procedures set forth in Chapter 4.12 of the Municipal Code in effect as of the Effective Date.

1.1.38. "Subdivision Sketch Plan". The sketch plan for the Property, to be approved by the Town pursuant to the requirements and procedures set forth in Chapter 4.12 of the Municipal Code in effect as of the Effective Date.

1.1.39. "Term". As defined in Section 1.3.

1.1.40 "Town". The Town of Eagle, Colorado, a municipal corporation.

1.1.41. "Town Board" means the Town Board of Trustees of the Town of Eagle, Colorado.

1.1.42. "Transfer Assessment" means a voluntary real estate transfer assessment as described in the Transfer Assessment Covenant.

1.1.43. "Transfer Assessment Covenant" means a declaration of covenants imposing and implementing a Transfer Assessment recorded against individual residential lots or dwelling units capable of being sold. The Transfer Assessment Covenant shall exempt from the Transfer Assessment: (a) any LERP Units, and (b) any transfer to affiliates.

1.1. 44. "Uniform, Non-Discriminatory Regulations". Collectively, Town ordinances, rules, regulations, policies and standards applicable in the same manner to all developments within the Town exceeding ten (10) single family or ten (10) multifamily units located on one (1) or more contiguous parcels of land held under the same or substantially the same ownership at the time of application for development, or to nonresidential developments containing thirteen (13) or more equivalent units (E.Q.R.) as defined in Chapter 12.16 of the Municipal Code, on one or more contiguous parcels of land held under the same or substantially the same ownership at the time of application for development.

1.1. 45. "Vested Property Rights Regulations". Chapter 4.17 of the Municipal Code in effect as of the Effective Date.

1.1. 46. "Vested Property Rights Statute". Sections 24-68-101 et. seq., of the Colorado Revised Statutes in effect as of the Effective Date.

1.2. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall touch, attach to, and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the Parties to this Agreement, except as otherwise provided in this Agreement.

1.3. Term. This Agreement shall commence on the effective date of the Town Board ordinance or resolution approving this Agreement and zoning the Property PUD (the "Effective Date") and shall continue until the end of the fifth (5th) year from the date of Final Approval if Start of Construction does not occur during such five (5) year period, or if Start of Construction occurs during such five (5) year period, this Agreement shall continue until the Completion of Construction and the expiration of any applicable warranty periods related to public improvements constructed as part of the Development. After the expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect; provided, however, that such termination shall not affect (a) the annexation of the Property to the Town; (b) the PUD Development Plan, PUD Guide and the zoning of the Property as PUD; (c) any common law vested rights obtained prior to such termination and all vested property rights as stated in this Agreement; (d) any rights arising from Town permits, approvals or other entitlements for the Property or the Development which were granted or approved prior to, or concurrently with, or subsequent to the approval of this Agreement and the PUD Development Plan; (e) any responsibilities concerning the maintenance, repair or replacement of public improvements and other Development improvements. (f) the Parties rights pursuant to subsection 26.4 below.

1.4. Final Approval means the later of the following dates:

(a) The date that is thirty-one (31) days following the date of publication of the latest of the ordinances or resolutions by which the Town Board approves the PUD Development Plan, or the zoning of the Property as PUD ("Board Approval"), provided that, within such thirty-one (31) day period, (a) no legal challenge to said ordinances or resolutions have been filed by any third party, (b) the Town Board has not referred said ordinances or resolutions to a vote of the registered electors of the Town, and (c) no third party has submitted a petition for a referendum seeking to reverse or nullify any of the

approvals (which subsections (a), (b), and (c) are individually referred to herein as a "Challenge" and collectively as "Challenges"; or

(b) If a referendum occurs, the date that there is a certification of election results upholding the Board Approval; or

(c) If a Challenge is filed, the date that the Town or the Developer, if applicable, prevail in the lawsuit (after all appeals have been exhausted); or

(d) The date that the Town approves the formation of the Metropolitan District and the Metropolitan District's service plan, in accordance with _____.

1.4.1 If a Challenge is filed within three (3) years after Board Approval, this Agreement shall remain in full force and effect unless within thirty (30) days after the Parties' receipt of legal notice that such Challenge has been filed, all Parties mutually agree in writing to terminate this Agreement. If the Parties do not mutually agree in writing to terminate this Agreement within such thirty (30) day period, then all Parties shall remain bound by the terms of this Agreement during the pendency of the Challenge until a final, unappealable determination by a court, which determination is adverse to one (1) or more of the Parties, occurs (the "Legal Challenge Period"). This Agreement shall be binding upon the Parties during the Legal Challenge Period, but none of the Parties shall be obligated to perform any obligations under this Agreement other than those set forth in this subsection 1.4 and subsection 1.6 during the Legal Challenge Period, and any date or deadline contained in this Agreement shall be extended for the number of days in the Legal Challenge Period. Provided, however, any obligation of the Town to join in or remain as a party in any legal proceeding shall not be construed to be a multiple-fiscal year direct or indirect financial obligation as that term is used in Section 20 of Article X of the Colorado Constitution and shall be subject to an annual appropriation approved by the Town Board. If the Town fails to annually appropriate sufficient funds to join in or remain as a party in a legal proceeding, such Party shall not be deemed to have breached this subsection.

1.5 Zoning. Until Final Approval has been obtained, the PUD zoning of the Property shall not be effective; provided, however, the PUD Zoning Plan for the Property as adopted by the Town with conditions, pursuant to Section 4.11.040 of the Municipal Code, shall remain effective for a period of five (5) years from the Effective Date.

1.6 Cooperation in Defending Legal Challenges. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of any provision of this Agreement or the PUD Development Plan, Developer, and the Town agree to cooperate in defending such action or proceeding and to bear their own expenses in connection therewith. Unless the Town, and Developer otherwise agree, each party shall select and pay its own legal counsel to represent it in connection with such action or proceeding. If any part of this Agreement is held to be invalid or of no effect by a court of competent jurisdiction, such judicial determination shall not affect any other part of this Agreement which will continue in full force and effect. If any part of this Agreement is determined by a court of competent jurisdiction to be in excess of the Town's power and authority, such part shall be unenforceable by any Party to

this Agreement. In the event a judicial determination of the nature described in the two (2) immediately preceding sentences, which determination has the effect of materially and adversely impairing to a substantial degree any of the Developer's or the Town's rights expressly established pursuant to this Agreement, each Party may elect to honor this Agreement as judicially reformed, or to terminate this Agreement without liability or penalty to the Developer, or the Town in which event this Agreement shall be of no further force or effect.

1.7. Effect of Termination. If this Agreement is terminated pursuant to any provision in this Section 1 or Section 2 this Agreement shall be null and void and of no effect; and no action, claim or demand may be based on any term or provision of this Agreement. In addition, the Parties agree to execute a mutual release or other instruments reasonably required to effectuate and give notice of such termination.

1.8. Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent in writing of the Town and Developer following the public notice and public hearing procedures required for approval of this Agreement. For the purposes of any amendment to this Agreement, "Developer" shall mean only Abrika Properties, LLC and those parties, if any, to whom Abrika Properties, LLC has specifically granted, in writing, the power to enter into such amendment. An amendment to the Development Plan shall not constitute or require an amendment to this Agreement.

1.9. Issuance of Building Permits. To the extent permitted by law, the Town's Building Department shall not accept for processing or approve any application for a building permit, temporary certificate of occupancy, or certificate of occupancy for the construction or occupancy of any building or structure within the Property or the Development unless the application therefor has first been approved by the Design Review Board to be created by the property owners' association or the Developer pursuant to a Declaration (the "Design Review Board"). Such Design Review Board approval shall be evidenced by a certificate of approval executed by an officer of the Design Review Board, which certificate shall be affixed to the plans and specifications made a part of each application for a building permit. In determining whether to issue such certificate of approval, the Design Review Board shall review for conformity with the PUD Zoning Plan, the PUD Development Plan including the PUD Guide, the Design Guidelines, and applicable covenants, conditions and restrictions for construction of improvements within the Development. The Town and Developer agree that the documents creating and governing a property owners association for Haymeadow will include architectural and landscaping design standards reasonably acceptable to the Town and the Developer. Nothing in this Section 1.9 shall be construed to create any independent obligation on the part of the Town to any landowner within the Development, or to any other party, with respect to an application's compliance with the Declaration or Design Guidelines.

Under the Declaration to be recorded by the Developer, the property owners' association shall agree to indemnify and hold harmless the Town, its officers, agents and insurers, from and against all liability, claims and demands, including the Town's reasonable attorney's fees including legal assistant's fees and costs, which arise out of or in any manner are connected with the Town's refusal to issue a building permit if such liability, claim, or demand is alleged to be caused in whole or in part by the acts, omissions, errors, mistakes or negligence of the Design Review Board in refusing to issue a certificate of approval as set forth above.

Section 1.10 Enforcement of Design Guidelines and PUD Guide. The Design Review Board shall have the sole responsibility for interpreting and enforcing the Design Guidelines. The Town shall have no responsibility to interpret or enforce such Design Guidelines, and shall have no obligation to any landowner within the Development to enforce the Design Guidelines. The Design Review Board shall further have a responsibility to interpret and enforce the PUD Guide in accordance with the terms of the Declaration.

The Town shall have the independent right and responsibility to interpret and enforce the provisions of the PUD Guide and Development Plan. The Town expressly reserves the right to refuse to approve any application for a Development Permit or a building permit, temporary certificate of occupancy, a certificate of occupancy for the construction or occupancy of any building or structure within the Development if said building or structure fails to comply with the requirements of the PUD Guide, applicable Development Permit or the provisions of the applicable Subdivision Final Plat, in the Town's sole determination.

The Town may exercise the power and authority of the Design Review Board under certain circumstances as set forth in the PUD Guide. This subsection 1.10 shall not be construed as a waiver by the Developer or building permit applicant of any right to appeal, subject to the appeal rights otherwise available under the Municipal Code, the Town's building codes or otherwise applicable law, the Town's refusal to approve any such application.

1.11. Scope of this Agreement.

1.11.1. This Agreement is intended to set forth the Parties' understandings and agreements as to the annexation of the Property pursuant to the Municipal Annexation Act of 1965, as amended; as to the procedures, limitations and standards applicable to the construction of future improvements that may be installed to serve the Property; as to the responsibilities of the Parties for various costs, fees and charges; and to such other matters the Parties believe can be adequately addressed at this time.

1.11.2. Except as otherwise provided in this Agreement, this Agreement is not intended to address those matters which are more appropriately considered at the time Developer submits to the Town for its review and approval Subdivision Final Plat applications for the Property. The Developer has submitted an application to the Town for Planned Unit Development (PUD) zoning, as more specifically described in the PUD Zoning Plan and PUD Development Plan documents. Agreement by the Developer to annex the Property is expressly conditional upon the Town granting such zoning. The Town has tentatively approved such zoning conditioned upon the Property being annexed, and shall not unreasonably withhold or condition its final approval of any Development Plan document. Except as otherwise set forth in this Agreement, the Town reserves all rights to review, approve or deny any future zoning application or future Subdivision Final Plat application on any portion of the Property, in accordance with State law and the ordinances and policies of the Town then in effect.

1.11.3. It is not the intention of the Parties in any way to diminish or limit the Town's legislative, judicial, quasi-judicial or other non delegable discretionary powers. Except as otherwise provided in this Agreement, it is not the intention of the Parties to impose on the Town any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the Town to approve or accept any items submitted by the Developer or its successors and assigns including, but not limited to, plans, drawings, reports, security documents, improvements, and conveyances. It is furthermore the expressed intention of the Parties that nothing in this Agreement shall be construed to void the rights and obligations of the Parties as set forth herein, to the extent such rights and obligations are consistent with law. The Parties expressly agree they will fully perform this Agreement.

1.11.4. The terms, conditions and criteria set forth in the Development Plan shall prevail and govern the development of Haymeadow, unless superseded by applicable provisions of the Municipal Code as expressly permitted by this Agreement. Where the Development Plan does not expressly address a specific subject, the applicable provisions of the Municipal Code shall control the development of Haymeadow, to the extent such Municipal Code provisions are not inconsistent with any express provision of the Development Plan or this Agreement. Pursuant to this Agreement and Section 24-68-105 C.R.S. in effect as of the Effective Date of this Agreement, application of such Municipal Code provisions shall not directly or indirectly have the effect of altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying, or otherwise materially and adversely affecting to a substantial degree Developer's vested property rights expressly set forth in this Agreement, except as otherwise permitted under Section 24-68-105 C.R.S. Notwithstanding the foregoing, Developer and the Town acknowledge and agree that the Town's APF Regulations shall apply to each application for Subdivision Final Plat approval during the Term, as set forth in Section 6. Provisions of the Design Guidelines which are more restrictive than either the Development Plan or the Municipal Code shall prevail in any instance where there is a conflict.

SECTION 2
CONDITION SUBSEQUENT

This Agreement is conditional upon the Metropolitan District entering into an intergovernmental agreement with the Town whereby the Metropolitan District agrees to be bound by all applicable terms and conditions of this Agreement. If the Metropolitan District fails to enter into such intergovernmental agreement within sixty (60) days following formation of the Metropolitan District, the Town reserves the right to terminate this Agreement for cause upon thirty (30) days written notice to the Developer. In such event, the Town agrees to grant an application for disconnection submitted by Developer, pursuant to Section 31-12-501, C.R.S., with the exception of the land upon which the Haymeadow Trail is located.

SECTION 3
ANNEXATION

3.1 Annexation. Annexation of the Property shall be in accordance with this Agreement and the Colorado Municipal Annexation Act of 1965, as amended (Sections 31-12-101, *et seq.*, C.R.S.).

3.2 Conditions Precedent. Annexation of the Property to the Town shall not be effective until the following conditions have been satisfied: (a) Developer and the Town have mutually executed and delivered this Agreement; (b) Final Approval has occurred.

3.3 Failure of Conditions. Until all of the conditions set forth in this subsection 2.2 above have been satisfied, this document shall constitute an offer by Developer and the Town to enter into this Agreement (notwithstanding the Parties' mutual execution and delivery of this document) and the annexation of the Property to the Town shall not be effective. Consequently, except as otherwise set forth in subsection 2.2 above, at any time before such conditions are satisfied, Developer may withdraw the Annexation Petitions and Developer or the Town may withdraw its offer to enter into this Agreement. If Developer withdraws the Annexation Petitions, either Party withdraws its offer to enter into this Agreement, or if Final Approval does not occur, then this Agreement shall be deemed void and of no force or effect, the Property shall be deemed not annexed to the Town, and the vested property rights described in this Agreement shall be deemed not established.

3.4 Metropolitan District Service Plan. If the Town has not formally approved the Metropolitan District Service Plan, in accordance with applicable law, on or before December 31, 2014, then Developer shall have the right to terminate this Agreement by notice to the Town within 30 days thereafter. In such event, Developer shall have the right to file an application with the Town for disconnection of the Property from the Town pursuant to Section 31-12-501, C.R.S. The Town hereby determines that the best interests of the Town will not be prejudiced by the disconnection of the Property in this instance, and therefore agrees to enact an ordinance effecting such disconnection.

SECTION 4
VESTED PROPERTY RIGHTS

4.1. Permitted Uses/Design Standards. Upon zoning of the entire Property to PUD, and adoption of an ordinance approving the PUD Guide, the permitted uses of the Property, the density and intensity of use, all as more specifically described in the PUD Guide and the Development Plan, provisions for reservation or dedication of land for public purposes, the general location of roads and trails, shall be those set forth in the Development Plan and this Agreement, as amended from time to time in accordance with Section 1.8 above.

4.2. Vesting of Property Rights. Developer and the Town agree that (a) this Agreement, together with the documents constituting the Development Plan constitute an approved "site- specific development plan" as defined in the Vested Property Rights Statute and the Vested Property Rights Regulations, and (b) the owners of the Property shall have vested property rights to

undertake and complete development and use of the Property as expressly provided in this Section 4. Pursuant to Section 4.17.110 of the Municipal Code:

APPROVAL OF THIS PLAN CREATES A VESTED PROPERTY RIGHT PURSUANT TO SECTION 24-68-103, C.R.S., AS AMENDED.

4.3. Property Rights Vested. The rights identified below shall constitute the vested property rights under this Agreement and under the approval of the Development Plan:

4.3.1. The right to develop, plan and engage in certain described land uses within the Property and the Development in the manner and to the extent expressly set forth in and pursuant to this Agreement and the documents constituting the Development Plan.

4.3.2. The right to develop, plan and engage in land uses within the Development in accordance with the densities, intensity of use, and general layout expressly set forth in the documents constituting the Development Plan.

4.3.3. The right to develop the Development at the rate and at the time as market conditions dictate, subject to the terms and conditions of this Agreement, the documents constituting the Development Plan, and any subdivision improvements agreements to be entered into by the parties.

4.3.4. The maximum height, bulk and size of proposed lots and buildings and other regulations as set forth in the PUD Guide.

4.3.5. The right to receive all Town approvals necessary for development of Haymeadow in accordance with this subsection 4.3 during the Term, provided that Subdivision Final Plats and other submittals of applications for approval comply with the terms of this Agreement and all then current Uniform, Non-Discriminatory Regulations, and subject to payment of all applicable review fees.

4.3.6. The Town shall not initiate any zoning, land use or other legal or administrative action that would directly or indirectly have the effect of altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise materially and adversely impairing to a substantial degree any of the Developer's vested property rights expressly set forth in subsections 4.3.1 through 4.3.5 above, except as otherwise permitted under Section 24 -68 -105, C.R.S., or as expressly set forth in this Agreement.

4.3.7. In accordance with Section 4.17.060(B) of the Eagle Municipal Code and Section 24-68-104(2), C.R.S. and this Agreement, the Developer shall be entitled to all rights, privileges and remedies arising under the Town's Vested Property Rights Regulations and Vested Property Rights Statute, as modified or limited by this Agreement, for a period of twenty (20) years from the date of Final Approval and as may be extended as provided in this Agreement, which the Town finds is warranted in light of all relevant circumstances including, but not limited to, the size and phasing of the Development, economic cycles, and market conditions.

4.4. Limitation of Vested Property Rights. In consideration of the Town's annexation of the Property, in consideration of the Town permitting vested property rights to accrue prior to the approval of Subdivision Final Plats for the Development, and in consideration of the Town's agreement to extend the duration of the period of vested property rights from three (3) years to twenty (20) years, the Developer agrees, as a matter of contract, pursuant to Section 4.17.070 of the Eagle Municipal Code, to waive all rights and privileges, if any, arising under the Town's Vested Property Rights Regulations and the Vested Property Rights Statute except as expressly set forth in subsections 4.3.1 through 4.3.4 of subsection 4.3. Developer states that such waiver is knowing, voluntary and made with the advice of legal counsel.

4.5. No Obligation to Develop. Developer shall have no obligation under this Agreement to develop all or any portion of the Development and shall have no liability under this Agreement to the Town or any other party for its failure to develop all or any part of the Development, unless otherwise expressly set forth in this Agreement. Nothing in this subsection 4.5 shall be construed as a waiver or release by the Town of its right to require Developer, in conjunction with obtaining approval of Subdivision Final Plats within the Development, to enter into subdivision improvements agreement(s) setting forth public improvements and certain private Development improvements required to be constructed by the Developer and deadlines for the construction of such improvements. Nothing in this subsection 4.5 shall be construed as a waiver or release by the Town to enforce against Developer the terms and conditions of such subdivision improvements agreement(s). Notwithstanding anything to the contrary in this subsection 4.5 or elsewhere in this Agreement, the following Developer obligations arise as a condition of annexation and Developer shall perform such obligations in accordance with the terms and conditions of this Agreement notwithstanding Developer's development or non-development of all or any portion of the Development:

4.5.1. Pre-payment of Water Plant Investment (Tap) Fees, if previously paid, as set forth in subsection 8.5 of this Agreement;

4.5.2. Payment of $700,000 for contribution to U.S. Highway 6 Study, if previously paid, pursuant to subsection 10.2 of this Agreement;

4.5.3. Payment of Development Impact Fees, if previously paid, pursuant to Section 7 of this Agreement;

4.5.4. Conveyance of water rights pursuant to subsection 8.1 of this Agreement;

4.5.5. Dedication or conveyance of schools/recreation parcel pursuant to Section 15 of this Agreement;

4.5.6. Dedication or conveyance of fire station parcel to the Greater Eagle Fire Protection District pursuant to subsection 14.3 of this Agreement.

4.5.7. Dedication of Land for the Haymaker Bicycle and Pedestrian Trail.

4.5.8. All other land dedications to the Town required pursuant to this Agreement, including but not limited to, dedications of rights-of-way and easements.

4.5.9. All payments of street improvement recapture fees, pursuant to Section 17 of this Agreement.

SECTION 5
DEVELOPMENT

5.1. General Description. The Property is comprised of approximately 660 acres of land adjacent to the Town of Eagle. The Development Plan for the Property provides for a maximum of 837 dwelling units (not including AUDs) consisting of single family units, duplex units, and multi-family units, a public school/recreation facility, a fire station, active and passive parks and recreation areas, community facilities, trails and open space on the six hundred sixty (660) acres of land.

The Planned Unit Development (PUD) is divided into two (2) residential districts. Residential District 1 consists of four (4) neighborhoods with single family, duplex and multi-family residential units. Residential District 2 consists of one (1) neighborhood for single family dwelling units not to exceed seven thousand (7,000) square feet maximum size, as further described in Exhibit ____, attached hereto and incorporated herein by this reference. Recreation open space areas will consist of Tract F, a Town park, and Tract H, Ouzel Park. Three (3) open space tracts will also be created for equestrian, pedestrian and bicycle trails, lakes, ponds, reservoirs and irrigation ditches, shade shelters and picnic areas, agriculture uses and associated facilities, and other uses. Tract I will provide a site for a future fire station and related improvements. Tract G will be dedicated to the Town for possible public school and/or recreation uses.

5.2. Phasing Plan. The following provisions indicate the general intent of the Developer regarding phasing of the Project. In any event, the terms of any phasing of the Development shall be provided in the PUD Guide, and in the event of any conflict between the provisions of this Section 5.2 and the PUD Guide, the PUD Guide shall control.

5.2.1 It is anticipated that the Project will be implemented in five general phases, starting closest to the existing town center and moving up the Brush Creek valley. The first phase will include the western portion of Neighborhood A and the extensions of Sylvan Lake Road and Ouzel Lane.

5.2.2 Developer anticipates the progression of phasing will proceed to the eastern portion of Neighborhood A as the first phase of single family lots are absorbed by the market. Neighborhood A is heavily weighted with 231 multi-familydwellings. The build-out of these multi-family dwellings may take years to complete while phasing progresses into the other neighborhoods, and there is no requirement that all of the multi-family dwellings be constructed prior to progress to other neighborhoods.

5.2.3 Thereafter, the phasing plan, as anticipated at this time, will advance from Neighborhood A to Neighborhood B and/or Neighborhood C and then sequentially on to Neighborhood D over the course of an anticipated seventeen to twenty year time frame. Provided however, the Developer shall not receive Subdivision Final Plat approval for Neighborhood D, or any part thereof, until all public improvements and other required

Development improvements in Neighborhoods A, B and C have been completed and approved by the Town Engineer. It is the intent of the Developer to initiate phased improvements as the sales market allows, however, it is not the intent to develop and dedicate road improvements well ahead of vertical construction. It is not the intent of the Developer to have large amounts of road system in place with no associated residential development.

5.2.4 In addition, and as a specific agreement regarding the construction of the Brush Creek Road Extension, Developer has agreed that lots that will accommodate no more than 300 residential dwelling units may be platted if the Brush Creek Road Extension has not been constructed, all as more particularly described in Section 10.1 of this Agreement.

5.3. Compliance with Current Regulations. Prior to the Town approving Final Subdivision Plats and building plans for the Property, but subject to the agreements of the Town and Developer as contained in this Agreement, Developer shall meet all then current Uniform, Non-Discriminatory Regulations of the Town (including but not limited to, building, fire, plumbing, electrical and mechanical codes, public improvement design standards, the Municipal Code and other rules and regulations); submit all required plans, specifications and other information; and pay all applicable review fees. Developer states that it has reviewed all applicable zoning, subdivision, building and other development regulations and ordinances of the Town currently in effect. To the extent expressly set forth in this Agreement, Developer agrees as a matter of contract and as a condition of the Town's annexation of the Property to abide by the requirements in such regulations as they exist on the Effective Date and as they may be amended from time to time, to the extent such requirements are not inconsistent with the vested property rights expressly established pursuant to Section 4 of this Agreement or other parts of this Agreement. Provided, however, Developer does not waive its right to oppose the legislative enactment of any such regulation, including any amendment to such regulations.

5.4. Start of Construction; Completion of Construction. If the Developer elects to Start Construction, the Developer or Metropolitan District, as applicable, shall Start Construction within five (5) years from the date of Final Approval. The Developer or the Metropolitan District, as applicable, shall Complete Construction of all required on-site and off-site public improvements or restore all property disturbed by Developer and/or Metropolitan District to its original condition, or such lesser condition acceptable to the Town or any combination thereof, in the Town's sole discretion within twenty (20) years from the date of Final Approval.

SECTION 6.
ADEQUATE PUBLIC FACILITIES

6.1 Determination of Adequacy. The Town hereby finds and determines that adequate Public Facilities will be available concurrent with the impacts of the proposed Development at the applicable Existing LOS Standards, conditioned only upon (a) Developer or Metropolitan District constructing the off-site street improvements described in Section 10 of this Agreement; (b) Developer paying the water plant investment (tap) fees as set forth in subsection 8.5 of this Agreement; (c) Developer constructing the Brush Creek Road Extension as set forth in

subsection 10.1 of this Agreement; (d) Developer's payment to the Town of $700,000 for planning improvements to U.S. Highway 6 as described in subsection 10.2 of this Agreement; (e) Construction of the Sylvan Lake Road/Meadowlark/Brush Creek Road realignment and roundabout as set forth in subsection 10.3; (f) Dedication or conveyance of the fire station parcel, Tract I, to the Greater Eagle Fire Protection District as set forth in subsection 14.3 of this Agreement; (g) dedication or conveyance to the Town of the school/recreation parcel to the Town as set forth in Section 13 of this Agreement; and (h) the Town's completing its Lower Basin Water Treatment Plant and having available a treated water supply capacity to serve the Development.("Conditional Positive Determination of Adequacy"). In accordance with Section 14.14.040 of the Municipal Code, the Town acknowledges that it has reviewed a Public Facilities impact statement accompanying Developer's application for approval of the PUD Development Plan (the "Impact Statement"), and that the Conditional Positive Determination of Adequacy was based upon such review. The conditions set forth above are in accordance with Section 14.14.050(C) of the Municipal Code. Within thirty (30) days following the date of Final Approval as described in subsection 1.4 above, the Town Board shall reaffirm the Conditional Positive Determination of Adequacy unless the Town Board finds that between the Effective Date as described in subsection 1.3 above and the date of Final Approval, changes have occurred that materially increase the impact from the Development on the Public Facilities. With respect to subsection (g) above, the Town agrees and acknowledges that as soon as pre-paid water plant investment (tap) fees are paid by Developer: (i) the Town is required to provide a treated water supply adequate to serve the Development, (ii) the Town is legally obligated to construct the Lower Basin Water Treatment Plant, and (iii) the Town will obtain financing for construction of the :Lower Basin Water Treatment Plant and will proceed with the bidding of the work and construction of the Lower Basin Water Treatment Plant on a timely basis with the intent of final completion of such treatment plant within three (3) years following the Town's approval of the first Subdivision Final Plat of the Development and prepayment by the Developer or District of the estimated water plant investment (tap) fees as required in subsection 8.5 of this Agreement.

6.2 Expiration of Determination of Adequacy. Unless otherwise provided herein, the Conditional Positive Determination of Adequacy as contained herein shall expire on the date that is ten (10) years after the date of Final Approval (the "DOA Period"). Notwithstanding the foregoing, (a) in the event that the Developer fails to Start Construction within five (5) years after the date of Final Approval, as set forth in subsection 1.4, the Conditional Positive Determination of Adequacy shall expire on the fifth (5th) anniversary of the date of Final Approval, or (b) in the event that a development approval sought by Developer for a portion of the Development deviates from the PUD Development Plan and this Agreement in a manner that materially increases the impact on Public Facilities (the "Increased Development Impact"), the Town may review the Conditional Positive Determination of Adequacy, in accordance with the Municipal Code, relating to such Increased Development Impact.

6.3 Future Determinations of Adequacy.

6.3.1 A Haymeadow PUD Planned Unit Development Comprehensive Development Impact Report and Public Facilities Impact Statement is being approved by the Town Board concurrently with the approval of the PUD Development Plan. Therefore, these approved statements and reports satisfy the requirements of Sections 4.07.030 and 4.14.040 of the Municipal Code, and applicants for future

subdivision approvals or development permits within the Haymeadow PUD Planned Unit Development are not required to include individual Development Impact Reports (as defined in the Municipal Code) or individual Public Facilities Impact Statements (as defined in the Municipal Code), during the DOA Period, if the subdivision or development permit applications do not deviate from the approved PUD Development Plan, the PUD Guide, and this Agreement in a manner which materially increases the impacts on the Public Facilities. During the DOA Period, as part of the Town's procedures for review and final approval of any application for approval of a Subdivision Preliminary Plan, Subdivision Final Plat, approval of a Development Permit, or approval of a special use permit, the Town Board, the Town's Planning Commission established by Chapter 2.24 of the Municipal Code, or administrative staff member vested with authority to approve such application shall make a determination that the conditions described in subsection 6.1 above have been met, have not been met, or will be met concurrently with the impacts generated by the proposed Development. No other Determination of Adequacy shall be made during the DOA Period so long as the subject application does not deviate from the approved PUD Development Plan, PUD Guide and this Agreement in a manner which materially increases the impacts on the Public Facilities. The Town shall find and determine that Adequate Public Facilities exist so long as the conditions have been met or will be met concurrently with the impacts generated by the proposed development and no deviation from the PUD Development Plan, PUD Guide, or this Agreement which materially increases the impacts has occurred. If a development application does deviate from the approved PUD Development Plan, PUD Guide or this Agreement in a manner which materially increases the impacts on the Public Facilities, the applicant shall submit an updated Public Facilities Impact Statement pursuant to subsection 4.14.040(A) of the Municipal Code which shall be reviewed by the Town in accordance with the procedures set forth in Section 4.14.060 of the Municipal Code. In making a Determination of Adequacy of Public Facilities, under such circumstances, the Town shall be entitled to use the LOS in effect as of the date the Determination of Adequacy is made.

6.3.2 In accordance with subsection 4.14.040(A) of the Municipal Code, after expiration of the DOA Period, all future applications for approval of a Subdivision Preliminary Plan, development permit or special use permit shall be accompanied by an updated Public Facilities impact statement, unless otherwise determined by the Town Planner. In accordance with Section 4.14.060 of the Municipal Code, after expiration of the DOA Period, and as part of the Town's procedures for review and final approval of any application for approval of a Subdivision Preliminary Plan, Subdivision Final Plat, approval of a development permit, or approval of a special use permit, the Town Board, the Town Planning Commission, or administrative staff member vested with authority to approve such application shall make a positive Determination of Adequacy, or make a negative Determination of Adequacy, or make a positive Determination of Adequacy with appropriate conditions. After the expiration of the DOA Period, in making a Determination of Adequacy of Public Facilities, the Town shall be

entitled to use the LOS in effect as of the date the Determination of Adequacy is made.

SECTION 7
DEVELOPMENT IMPACT FEES

7.1. Development Impact Fees. The Developer expressly agrees, as a matter of contract and as a condition of the Town annexing the Property, to pay the following development impact fees. Such fees for any particular portion of development shall be paid at the time of approval of a Subdivision Final Plat for the Property, or any portion thereof, unless otherwise described herein.

7.1.1 Street Improvement Fees. The Developer shall pay Street Improvement Fees (as defined in Section 4.13.185 of the Municipal Code), including any adjustment for changes in construction costs as set forth in Section 4.13.185(K) of the Municipal Code to the Town as required at the time of each Subdivision Final Plat approval within the Development.

7.1.2 Fire Protection Impact Fees. The Developer shall pay Fire Protection Impact Fees (as defined in Section 4.13.186 of the Municipal Code) for proposed development within Neighborhood A-1, A-2 and B upon approval of the first Subdivision Final Plat contained within Neighborhood A-1. Payment of Fire Protection Impact Fees for Neighborhoods C and D shall be paid concurrently with each Subdivision Final Plat approved for these Neighborhoods.

7.1.3 Emergency Medical Impact Fees. The Developer shall pay Emergency Medical Services Impact Fees (as defined in Section 4.13.187 of the Municipal Code) including an adjustment for inflation as set forth in Section 4.13.187(K) of the Municipal Code. to the Town as required at the time of each Subdivision Final Plat approval within the Development.

7.2. Waiver of Right to Challenge Fees. Except for the offset rights of Developer contained in Section 5.6.3.2 of this Agreement, the Developer specifically acknowledges that the impact fees described in this Section 7 are reasonable and necessary to mitigate the off-site impacts generated from development or subdivision of the Property. Such acknowledgment by Developer shall be binding on any subsequent owner of the Property. The Developer hereby waives and releases any right it may have to challenge or contest such fees in any court of competent jurisdiction on the basis that such impact fees are not reasonably related in the impacts of development or subdivision of the Property. Provided, however, that such waiver and release by Developer shall not be construed as a waiver or release by Developer, or by any subsequent owner of the Property, of any cause of action or remedy, whether at law or in equity, with respect to any other or additional fee or methodology for calculation of such fee. Developer states that such release and waiver is knowing, voluntary and made with the advice of legal counsel.

SECTION 8.
WATER AND WASTEWATER SERVICES

8.1 Water Rights and Water Systems:

8.1.1 Conveyance to the Town. Upon Final Approval, Developer shall convey to the Town the water rights listed on Exhibit B, attached hereto and incorporated herein by this reference, by Special Warranty Deed (the "Water Rights").

8.1.1. In the event the PUD is developed by separate plats, Developer and the Town shall negotiate in good faith with the Developer, property owners association or Metropolitan District to lease back from the Town a proportionate interest in the Water Rights to continue the raw water irrigation of the undeveloped land within the PUD until such time as development occurs. Such lease back for raw water irrigation may be adjusted from time to time by written agreement between the Town and Developer or its successor(s). Terms of this lease back and detailed operations of the Raw Water Irrigation System, as described below, including how historic flood irrigation shall be phased out by plat will be detailed in subsequent agreements to be drafted between the Town and Developer, property owners association or Metropolitan District, and agreed approval of first Subdivision Final Plat. Such lease back will be in the form of an agreement between the Town and Developer/property owners association or Metropolitan District and shall be executed before or at the time of final approval of the first Subdivision Final Plat.

8.1.2. Upon the conveyance of the Water Rights to the Town, the Town shall file an application with the District Court in and for Water Division No. 5 for approval of changes of the Water Rights, including but not limited to a change to alternate points of diversion for the Raw Water Irrigation System of the PUD described below, a change to municipal use/augmentation for a minimum of 160 acre-feet, and a change to the Warm Springs Ditch for irrigation of the recreation area through the Town's existing raw water system; and an augmentation plan to enable the Town to use the Water Rights within the Town's municipal water supply system. The augmentation plan will include contract storage water to be acquired by the Town. The Developer shall be responsible for all costs and fees associated with obtaining the contract and the Developer/property owners association or Metropolitan District shall pay all annual costs associated with the amount of water necessary for potable service to the PUD. The Developer shall be responsible for all costs and fees, including but not limited to engineering and attorney fees and costs, incurred by the Town associated with prosecution to completion of any water court application filed hereunder, which amount shall not exceed $75,000.00. An initial retainer of $20,000 toward this amount shall be paid by Developer to the Town upon the conveyance of the Water Rights to the Town, and thereafter the Town shall bill the Developer these fees and costs on a monthly basis to be paid by Developer upon the terms thereof. In the event Developer fails to pay any such invoice in a timely manner, the Town shall be entitled to all fees and costs of pursuing collection thereof, and shall be entitled to a lien therefor against any property within the Haymeadow PUD still owned by Developer. Developer covenants and agrees, that neither it, nor its successors or

assigns, shall file a statement of opposition in any water court proceeding that involves the Water Rights.

8.2 Provision of Treated and Irrigation Water Service

8.2.1 It is agreed by Developer and the Town that there will be no more than a total of 837 residential units on the Property, not including ADUs. Consistent with the PUD final approval, the number of units within each category below may vary so long as the water rights dedication made hereunder continues to be adequate for the uses contemplated thereunder. The total amount of water used by the Development may vary but cannot be increased by more than the amount of water conveyed to the Town by the Developer and allocated to municipal use as set forth above. Municipal treated water service will be provided by the Town for all in house domestic, institutional and public uses contingent upon construction of the water distribution system by the Developer or Metropolitan District described in subsection 8.3 below. In addition, the municipal service will provide for the following landscape irrigation:

8.2.1.1. Approximately ___ single family/duplex lots in all neighborhood districts with a total irrigation requirement not to exceed 43.3 acres. Individual irrigated lot landscaping will vary from approximately ___ square feet to ___ square feet.

8.2.1.2. A limited number of public parks and recreation lands may be irrigated through the municipal system as determined by the Town in its sole discretion.

8.2.2. A raw water irrigation system, built by Developer or the Metropolitan district and owned, operated, maintained and repaired by the Developer/property owners association/or Metropolitan District as set forth below, shall service certain landscaping irrigation, including but not limited to, parks and recreation areas, yard area within multi-family projects, fire station landscaping, open space corridor irrigation, landscaped public rights-of-way, and pasture irrigation requirements ("Raw Water Irrigation System"), for a total irrigated area not to exceed 280.5 acres unless otherwise agreed to in writing by the Town. Developer or the Metropolitan District shall submit to the Town for approval a Raw Water Irrigation Operations Plan. The areas irrigated by the Raw Water Irrigation System may be reduced or decreased during low flow stream conditions at the Town's discretion in accordance with the obligations of the Developer under the Brush Creek Watershed Management Plan ("BCWMP"). If necessary, the BCWMP shall be amended by Town to include low flow condition protocols for operation of the Raw Water Irrigation System and shall be binding on the owner and operator of the Raw Water Irrigation System. As set forth above in subsection 8.1.1, the irrigation water necessary to serve this Raw Water Irrigation System shall be leased by the Town back to the Developer, property owners association or the Metropolitan District.

8.2.3. Upon Final Approval, completion of the required dedication of water rights, compliance with applicable regulations and legal requirements, execution of this

Agreement, payment of pre-paid plant investment (tap) fees, execution of subdivision improvement agreements and the construction of the water distribution and transmission mains and lines and wastewater collection facilities for any phase or phases of the Development by Developer or the Metropolitan District, as set forth in subsection 8.3, conveyance of the same to the Town together with associated facilities and easements, and payment of plant investment (tap) fees pursuant to the Municipal Code and subsection 8.5 below, and connection charges, the Town hereby agrees to provide treated water service within the Haymeadow PUD and the treated water to be delivered by the Town pursuant to the terms of this Agreement may be used for all purposes as decreed.

8.2.4. All building permits issued for all multi-family projects, except as otherwise provided in this Agreement, shall include a provision which limits the installation of faucets, hoses, or water connections any place on the outside of any unit, or building, to a maximum of two (2) hose connections per unit or building which shall not be used for lawn irrigation purposes.

8.3 Construction of Municipal Water Distribution System. The Developer or Metropolitan District, at its sole expense, shall design, purchase, and install all elements of a municipal treated water distribution system (including a water storage tank) to fully service the Development as more fully set forth in this Agreement and the Development Plan, including but not limited to water mains; water storage tanks; fire hydrants; service line laterals; pipelines; and all appurtenant facilities necessary to provide treated municipal water service to the Property. This municipal water distribution system shall be constructed in accordance with all Town specifications and Uniform Non-Discriminatory Regulations and pursuant to plans that are approved by the Town prior to the commencement of construction thereof and any subsequently executed subdivision improvements agreements and shall comply with all other requirements for public improvements as set forth in this Agreement. The Town agrees to assist the Developer in obtaining easements for water line locations across other property if necessary subject to Developer or Metropolitan District paying and all costs associated with the acquisition thereof. The design of these improvements shall be reviewed and approved by the Town with the applicable Subdivision Final Plat or other Development Permit applications. The Parties understand that is it necessary to construct the water storage tank and related distribution system improvements prior to the issuance of the first building permit for a structure in the Development.

8.4 Construction of Raw Water Irrigation Distribution System. The Developer, or the Metropolitan District, shall install, at its sole expense, a separate raw water irrigation distribution system or systems, as approved by the Town, using water diverted from Brush Creek for application on the Property in accordance with this Agreement and the phases of development approved herein, and shall include installation of a raw water system for irrigation of parks, open space, recreation sites, hay meadow, wildlife corridor, multi-family sites, and the school/recreation site as set forth above. If necessary, prior to approval of the first phase of the Development, ownership of the raw water irrigation system shall be transferred to the property owners association or Metropolitan District, and any service plan amendment therefor shall be approved by the Town. The parties agree that those water rights necessary for the Raw Water

Irrigation System shall be leased by the Town to the Developer, property owners association or Metropolitan District, as set forth above, subject to an agreement entered into by the Parties and recorded with the Eagle County Clerk and Recorder and the Colorado Division of Water Resources providing that such water rights shall be subordinate to the Town's municipal water rights. The Developer, property owners association or the Metropolitan District, at its sole expense, shall be responsible for the ongoing maintenance and repair of all aspects of the Raw Water Irrigation Distribution System, including but not limited to: irrigation ditches, laterals, reservoirs, pumps, distribution lines, other appurtenant facilities and headgates, except that the Town shall have exclusive control over the operation of any ditch headgates or other Brush Creek diversion structure. Until the Raw Water Distribution System is constructed, the Irrigation Water leased back by the Town to the Developer shall continue to be conveyed in its historical manner through the existing irrigation ditches located on the Property.

8.5 Water Plant Investment (Tap) Fee and Prepayment of Deposit.

As a matter of contract and as a condition of the Town's Annexation of the Property, the Developer shall prepay water plant investment (tap) fees in accordance with the requirements of Section 12.13.040 of the Municipal Code.

The current plant estimated investment (tap) fees based on the approval of 837 residential units, an estimated 837 EQRs, and a plant investment (tap) fee of $7,000 per EQR is a total of $5,859,000. Because 60% of $5,859,000 is greater than $3,000,000, the prepaid deposit shall be $3,000,000. Credit for the deposit shall be based on $3,000,000, which is 51.2033% of the estimated plant investment fees.

The pre-payment deposit shall be $3,000,000 and shall be paid within seven (7) days the date of Final Approval. The Town Board in its sole discretion may defer the pre-payment of such fees for a period of time as defined in Section 12.16.040. If such pre-payment is deferred, payment of such fees shall be due upon demand of the Town, and the obligation to pay such fees shall be secured by an irrevocable letter of credit or such other performance guarantee as approved by the Town Attorney.

The deposit provided shall be non-refundable and shall be applied, as a credit, to the plant investment (tap) fees for individual water consuming units based on an EQR prorata basis as follows:

$$\frac{\$3{,}000{,}000}{837\ EQRs} = \frac{\$3{,}584}{EQR}$$

If the prepayment of $3,000,000 is entirely credited within the Development by using the above formula, then any applicant for a subsequent building permit shall pay 100% of the then prevailing plant investment (tap) fees less any credit applied.

At the time of application for any building permit for construction of any structure which will use Town water service, the property owner or authorized representative shall make application to the Town Clerk and to the Public Works Director for water service to the property for which the building permit is issued. The plant investment (tap) fee shall be assessed at the then prevailing rate applicable. The credit applied shall be $3,584 per EQR according to Section 12.16.040 of the Municipal Code. The balance due for any plant investment (tap) fee shall be due and payable at the same time the building permit is issued.

8.6 Provision of Wastewater Treatment Service. Upon annexation, and the Developer's or Metropolitan District's compliance with Section 8.7 below, the Town agrees to provide wastewater collection and treatment service to the Development upon Developer or other property owner making a written request for such service and the payment of any required plant investment fees and connection charges at the then prevailing rate as established by the Municipal Code. The Parties acknowledge that the Town has sufficient wastewater capacity to serve the Development. However, service will be made available on a first come/first served basis with other wastewater customers subject to available system treatment capacity and any prior commitments.

8.7 Construction of Wastewater Collection System. The Developer or Metropolitan District, at its sole expense, shall design, purchase, and install all elements of the wastewater collection system to fully service the Development pursuant to the provisions of this Agreement, the Development Plan and the then existing provisions of the Municipal Code, the Town's Uniform Non-Discriminatory Regulations, and subsequently executed subdivision improvements agreements. The Town agrees to assist the Developer in obtaining easements for wastewater line locations across other properties if necessary, subject to Developer or the Metropolitan District paying any and all costs associated with the acquisition thereof. The Parties acknowledge that it is necessary to construct substantial portions of the collection system improvements prior to the issuance of the first building permit for a structure in the Development. Taps will be made available by the Town on a first come/first served basis with other wastewater customers, subject to available system treatment capacity and any prior commitments. Developer will not receive any preference for or assurance of availability of wastewater service from the Town until the fees are paid as set out in this Section. Upon payment of the wastewater plant investment (tap) fees as provided in this subsection, Developer shall have a permanent reservation of wastewater plant capacity and the right to use the Town's wastewater system.

8.8. Plant Investment Fees and Related Charges-Computation and Payment. All plant investment fees for treated water service and wastewater collection and treatment service herein provided for shall be assessed utilizing the Town's then prevailing plant investment fee schedule and connection charge schedule (if any) established in the Municipal Code at the time of application for a building permit for the structure for which service is sought.

8.9. Waiver of Right to Challenge Fees. The Developer and the District's specifically acknowledge that the fees and water rights dedications described in this Section 8 are reasonable and necessary to mitigate the impacts generated from the development of the Property. Such acknowledgment by Developer and the District shall be binding on any subsequent owner of the Property. The Developer and the District hereby waive and release any right they may have to challenge or contest such fees in any court of competent jurisdiction on the basis that such fees or required dedications are not reasonably related to the impacts of development of the Property. Developer and the Districts state that such release and waiver is known, voluntary and made with the advice of legal counsel.

SECTION 9
CONSTRUCTION AND INSTALLATION OF ON-SITE IMPROVEMENTS

9.1 General Improvements. Developer will, at its sole cost and expense, design and construct all on-site improvements required by the Development Plan, PUD Guide, the Town of Eagle Municipal Code, this Agreement, and subsequent subdivision and Development Permit approvals. Such improvements may include, but are not limited to: streets, sidewalks, utilities, drainage systems, recreation trails, parks, open space improvements, fencing, irrigation systems, etc. Unless otherwise provided for in this agreement, the Development Plan or PUD Guide, the on-site improvements will be constructed in a manner and on a schedule to be determined in subsequent Subdivision and Development Permit review processes.

9.2 Perimeter Fence. Developer will, at its sole cost, design and construct a perimeter fence along the northerly and easterly boundaries of the Property. The purpose of the perimeter fence is to prevent livestock entering the Property from adjoining lands. The perimeter fence will be designed and constructed using guidelines promulgated by the Colorado Division of Parks and Wildlife so as to be wildlife friendly. Additionally, the perimeter fence shall incorporate cattle guards or other similar devices at all approved recreation trail crossings. With the first Subdivision Final Plat application for Haymeadow, the Developer shall submit to the Town for approval a plan detailing the location, materials, and design of the perimeter fence. The Perimeter Fence will be forever owned and maintained by the Developer/property owners association or Metropolitan District.

9.3 Brush Creek Road Fence. The Developer will, at its sole cost, remove the existing fencing along Brush Creek Road (the southerly boundary of the Property) and along the westerly boundary of the Property. The parties understand that this fence will be removed in stages as the Property is developed and the land is converted from agricultural use. Removal of this fence will commence with the development of the first subdivision of the Property.

9.4 Raw Water Irrigation System to the School/Recreation Parcel. The Developer shall, at its sole cost and expense, design and construct a pressurized raw water irrigation system to the portions of the school/recreation parcel that cannot be served with the Town's existing Brush Creek Meadows non-potable irrigation system. This Raw Water Irrigation System shall be constructed with the development of the first subdivision within the Property.

9.5 Utility Service to the Fire Station Parcel. With development of the first subdivision within the Property, the Developer shall construct, at its sole cost and expense, utility services to the property line of the fire station parcel. These utilities shall include: potable water, sanitary sewer, raw water irrigation, electric, telephone, cable TV, and natural gas. Developer shall ensure that all utility service lines are adequately sized so as to be capable of serving the proposed fire station.

9.6 Recreation Path Connection to Existing Pool and Ice Rink Facility. Developer shall, at its sole cost and expense, design and construct a ten foot (10') wide asphalt paved recreation path between Neighborhood A1 and the existing Pool and Ice Rink Facility as generally depicted in the engineering drawings submitted during the PUD Development Plan and Subdivision Preliminary Plan review process and attached hereto as Exhibit ___. This improvement shall be included in the public improvements included in the first Subdivision Final Plat application submitted within the Development and shall be complete and available for use by the public prior to the issuance of the first temporary certificate of occupancy for a residence in Haymeadow.

9.7 Recreation Trail or "Spine Trail". With development of the first subdivision within the Property, the Developer shall construct, at its sole cost and expense, a ten foot (10') wide asphalt paved recreation path generally paralleling Sylvan Lake Road and Ouzel Lane as depicted on Exhibit __. The Parties understand that as subsequent Neighborhoods are developed this Spine Trail will be extended eastward and will include at least one additional connection to Brush Creek Road.

9.8 Wetlands Restoration and Enhancement. With application for the first Subdivision Final Plat within the Haymeadow the Developer shall submit to the Town for approval a Wetlands Restoration and Enhancement Plan for the Property. This Plan will include a schedule of when various wetland areas will be treated as the development of the Property proceeds.

9.9 Sylvan Lake Road Extension to Brush Creek Road. Developer agrees that any subdivision or Development Permit application for Neighborhoods C and D shall include for Town review and approval an evaluation of extending Sylvan Lake Road to intersect with Brush Creek Road near the eastern boundary of the Property. Upon review of this evaluation, should the Town choose to require the extension of Sylvan Lake Road, the Developer shall construct, at its sole cost and expense, the roadway including the dedication of any right-of-way necessary for the extension.

SECTION 10
CONSTRUCTION AND INSTALLATION OF OFF- SITE PUBLIC IMPROVEMENTS

10.1 Brush Creek Road Extension. Developer shall, at its sole cost and expense, design and construct the Brush Creek Road Extension on or before the date that application is made for the 300th building permit for a residence in Haymeadow, or within five (5) years from the date of approval of the first Subdivision Final Plat within the Haymeadow, whichever occurs first. However, should there be less than 100 building permits issued within Haymeadow within five (5) years from the date of the approval of the First Subdivision Final Plat, then the Brush Creek

Road Extension construction completion shall be delayed until the application for the 300th building permit for a residence in the Haymeadow is made. Unless construction of the Brush Creek Road Extension has commenced previously, the Brush Creek Road Extension will be included as a public improvement in the subdivision improvements agreement for the Subdivision Final Plat that contains the 300th unit within Haymeadow; provided, however, that no letter of credit shall be required to be posted for completion of the Brush Creek Road Extension until such time as the 200th building permit has been granted within Haymeadow. In any event, the Developer shall complete the preparation of the engineering design and construction drawings for the Brush Creek Road Extension prior to the submission for approval of the second Subdivision Final Plat application within Haymeadow, or prior within three (3) years of the approval of the first Subdivision Final Plat within Haymeadow, whichever shall first occur. Any necessary right-of-way shall be acquired by the Town and/or Metropolitan District at latest within the two (2) years of the completion of the Town approved construction drawings. All permits necessary for the construction of the Brush Creek Road Extension shall be acquired within two (2) years of the completion of the Town approved construction drawings.

The Brush Creek Road Extension shall include, at a minimum: one through lane in each direction (two lanes total); auxiliary lanes at intersections as determined to be necessary pending completion of the engineering design, construction drawings, and permitting; a ten foot (10') wide detached paved recreation path generally parallel to the roadway; all necessary storm drainage improvements including outfall and water quality mitigation measures; lighting; curb and gutter as determined to be necessary pending completion of the engineering design, construction drawings, and permitting; all necessary driveway and/or parking improvements; any necessary utility relocations; and any other improvements necessary for the safe operation, construction, and permitting of the proposed street.

10.2. Contribution to US Highway 6 Study. Developer shall pay a sum not to exceed $700,000 to the Town to pay for the costs incurred to complete the planning for improvements to US Highway 6. The US Highway 6 Study is anticipated to cost approximately $1,000,000. The Town shall pay for the first $300,000 of such costs, as and when payment for same comes due. After payment of the Town's contribution, Developer will pay to the Town the amount of further invoices for such costs within thirty (30) days after they are presented to Developer for payment, either as reimbursement to the Town if the Town has already paid same, or as direct payment to the vendor. Developer shall only be liable for a total of $700,000, and any costs of the US Highway 6 Study in excess of $1,000,000 shall be paid by the Town without contribution from Developer. In order to secure such payment by Developer, upon Final Approval, the Developer shall deliver to the Town a performance guarantee in the amount of $700,000 in accordance with Section 12 of this Agreement.

10.3 Sylvan Lake Road/Meadowlark/Brush Creek Road Re-alignment and Roundabout Intersection. Developer or Metropolitan District shall, at its sole cost and expense, design and construct the Sylvan Lake Road/Meadowlark/Brush Creek Road re-alignment and roundabout intersection as generally depicted in the engineering drawings submitted with the PUD Development Plan application, dated December 2013. These improvements shall be included in the public improvements to be constructed in the first Subdivision Final Plat application within

the Development and shall be complete and available for use by the public prior to the issuance of the first temporary certificate of occupancy for a residence in Haymeadow.

10.4 Recreation Path Connection to Existing Pool and Ice Rink Facility. Developer shall, at its sole cost and expense, design and construct a ten foot (10') wide asphalt paved recreation path between Neighborhood A1 and the existing Pool and Ice Rink Facility as generally depicted in the engineering drawings submitted during the PUD Development Plan and Subdivision Preliminary Plan review process and attached hereto as Exhibit ___, and incorporated herein by this reference. This improvement shall be included in the public improvements to be constructed in the first Subdivision Final Plat application submitted within the Development and shall be complete and available for use by the public prior to the issuance of the first temporary certificate of occupancy for a residence in Haymeadow.

SECTION 11
STANDARDS FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

11.1. Construction of Improvements. In the subdivision and/or development of the Property, the Developer hereby agrees to dedicate, develop and pay for construction of all public improvements and other required Development improvements, including certain off-site improvements as provided in this Agreement, and the extension of all required utility services in accordance with any applicable subdivision improvements agreement(s),the Municipal Code and the Town's Uniform Non-Discriminatory Regulations then in effect, unless the Metropolitan District agrees to assume such responsibilities. Such improvements may include paving, grading, landscaping, curbs, streets, gutters, sidewalks, street lighting, street signs, traffic control devices, park improvements, bicycle and pedestrian paths, flood protection devices, drainage structures, municipal water lines, mains, water storage tanks and related facilities, and wastewater collection facilities. Unless otherwise provided in any subdivision improvements agreement to be entered into by the Parties, design criteria for such improvements, as well as building sites, parking, landscaped areas and open spaces shall be subject to Town approval and shall be part of any Subdivision Final Plat application submitted and approved for the Property. All subdivision improvement agreements entered into between the Town and the Developer or Metropolitan District shall be consistent with the terms of this Agreement.

11.2. Construction Operations Plan. Prior to the approval of the first Subdivision Final Plat for development of the Property, the Developer shall submit to the Town for review and approval, and the Town shall approve, a construction operations plan for the Development. The plan shall include a plan for construction access, shall include proposed temporary interior haul roads, as necessary, hours of operation for constriction, noise mitigation and reclamation standards for all surface areas disturbed by constriction.

11.3 Access to Adjacent Lands. The Developer shall not submit Subdivision Final Plats for any portion of development of the Property that provide for additional public street access, not now existing, to privately held lands adjacent to the Development, without the Town's consent.

11.4 Warranty by Developer and Metropolitan District. The Developer and/or the Metropolitan District shall warrant any and all Public Improvements which it was responsible for constructing and which are conveyed or dedicated to the Town pursuant to this Agreement or the PUD

Development Plan for a period of two (2) years from the date the Town's Engineer Final Acceptance (as hereinafter defined) (the "Warranty Period"). Specifically, but not by way of limitation, the Developer or the District, as applicable, shall warrant the following:

11.4.1 That the title conveyed shall be good and its transfer rightful; and

11.4.2 Any and all Public Improvements conveyed shall be free from any security interest or other lien or encumbrance; and

11.4.3 Any and all Public Improvements so conveyed shall be free of any and all defects in materials or workmanship.

In addition, all other private development improvements required to be warranted pursuant to the Municipal Code, such as utility installations, parking improvements, landscaping improvements and other improvements as shown in the PUD Development Plan and accompanying plans, and approved construction drawings submitted to the Town for the Development, except for vertical improvements, buildings and structures, shall be warranted in accordance with the Municipal Code except that the Warranty Period shall be for twenty-four (24) months.

Sixty (60) days prior to the expiration of the Warranty Period, time being of the essence, the Town's Engineer shall issue a Warranty Punchlist to the Developer or the District, as applicable, indicating any defects in materials or workmanship that must be corrected prior to the expiration of the Warranty Period. In the event the Developer or the District, as applicable, fails to correct such defects prior to the end of the Warranty Period, the Town may, after all applicable notice and cure periods, (a) exercise all equitable remedies, including an action for injunction or specific performance, or (b) obtain from the Developer or the District reimbursement of the actual out of pocket costs and expenses incurred by the Town, in excess of the amount of the performance guarantee, to correct such defects.

11.5 Approval by Town's Engineer.

11.5.1 Upon full Completion of Construction by the Developer or the District of such Public Improvements and other Development improvements, the Developer or District, as applicable, shall submit to the Town's Engineer a written request for an inspection and the preparation of a Final Acceptance Punchlist. Upon receipt of such request, the Town's Engineer shall inspect the improvements within thirty (30) days of receipt of said written request from the Developer or the District and prepare a written Final Acceptance Punchlist which shall be provided to the Developer or District, as applicable. Within one hundred eighty (180) days from the receipt of the Final Acceptance Punchlist, the Developer or the District, as applicable, shall make all corrections required by the Final Acceptance Punchlist. In the event the Developer or the District, as applicable, fails to complete the Final Acceptance Punchlist work within said one hundred eighty (180) day period, the Town, after all applicable notice and cure periods, may (a) exercise all equitable remedies, including an action for injunction or specific performance, or (b) obtain from the Developer or District reimbursement of the

actual out of pocket costs and expenses incurred by the Town, in excess of the amount of the performance guarantee, to make such corrections.

11.5.2 Upon completing the Final Acceptance Punchlist work, the Developer or District, as applicable, shall submit to the Town's Engineer a written request for final acceptance of the completed improvements. The Town's Engineer shall then inspect said improvements and issue a written determination as to whether the Final Acceptance Punchlist work has been satisfactorily completed within thirty (30) days of the Developer's or District's request, as applicable. If the Town's Engineer determines that the Final Acceptance Punchlist work has not been satisfactorily completed, the Town's Engineer shall issue a revised written Final Acceptance Punchlist to the Developer or District, as applicable. Upon a determination by the Town's Engineer that the Final Acceptance Punchlist work has been completed in a satisfactory manner, the Town's Engineer shall prepare a bill of sale for the improvements to be conveyed for review by the Town's Administrator. The Town's Administrator shall issue a written acceptance of the bill of sale within forty-five (45) days of the determination that the work is complete. The Warranty Period set forth in subsection 11.4 above shall commence upon the date of approval of the bill of sale.

11.6 Provision of "As Built" Drawings. Prior to final acceptance and approval of improvements as required by subsection 11.5 above, the Developer or the District, as applicable, shall provide all necessary engineering designs, surveys, field surveys, and "as built" drawings for all Public Improvements and utility improvements for review and approval by the Town's Engineer at the Developer's or the District's sole cost and expense. The legal description of all utility service lines shall be prepared by a registered land surveyor at the Developer's or District's sole expense, as applicable. In addition, all reasonable expenses incurred by the Town in updating the Town's base maps shall be paid by the Developer or the District, as applicable, to the Town.

11.7 Conveyance of Public Improvements. Unless otherwise agreed by the Town, all Public Improvements constructed in accordance with this Agreement, the PUD Development Plan, any Subdivision Preliminary Plan, Subdivision Final Plat, and any applicable subdivision improvements agreement, including but not limited to, water mains, service lines, laterals, the water storage tank, fire hydrants and other water distribution facilities; all wastewater collection mains, lines, laterals and related improvements; street improvements; required sidewalks, curbs and gutters; required traffic control devices, pedestrian and bicycle trails; park improvements; and Town street lights shall be dedicated to the Town and warranted for the Warranty Period. Following such dedication or conveyance, the Town shall be solely responsible for the maintenance of such Public Improvements, unless otherwise provided in this Agreement, and except for any correction work required during the Warranty Period. Upon dedication or conveyance to the Town, the Town shall be solely responsible for all electrical service charges associated with Town street lights and traffic signals so dedicated or conveyed. Further, any damage to any Public Improvement caused by the Town or other parties in connection with the maintenance thereof shall not be covered by Developer's warranty and Developer shall have no obligation to repair such items if identified on a Warranty Punchlist.

11.8 Improvements Required Prior to Issuance of Building Permits and Temporary Certificates of Occupancy. All improvements required by the Municipal Code, and as otherwise required by this Agreement, or as required by subsequent subdivision or development approval documents must be complete prior to the issuance of building permits and temporary certificates of occupancy. All improvements required by the Municipal Code for issuance of a certificate of occupancy shall be required for the issuance of temporary certificates of occupancy within the Development, and as otherwise required by this Agreement, or as required by subsequent subdivision or development approval documents.

SECTION 12
PERFORMANCE GUARANTEES

12.1 Public Improvements and Other Required Development Improvements. In accordance with subsection 4.06.010(F) of the Municipal Code, in order to secure the construction and installation of the Public Improvements which will be dedicated and conveyed to the Town, the Developer or District, as applicable, shall furnish the Town with one (1) or more of the following:

12.1.1 A cash deposit in the amount equal to one hundred ten percent (110%) of the estimated costs to construct the Public Improvements that will be dedicated to the Town, pursuant to an escrow and disbursement agreement reasonably approved by the Town's Attorney; or

12.1.2 An irrevocable standby letter of credit in an amount equal to one hundred ten percent (110%) of the estimated costs to construct said Public Improvements that will be dedicated to the Town, in a form approved by the Town's Attorney; or

12.1.3 A performance bond from a surety licensed in the State of Colorado in an amount equal to one hundred ten percent (110%) of the estimated costs to construct said Public Improvements that will be dedicated to the Town, in a form approved by the Town's Attorney; or

12.1.4 Such other security as may be satisfactory to the Town's Attorney.

12.2 Reduction in Security. Upon Completion of Construction of the Public Improvements, approval by the Town's Engineer of the Final Acceptance Punchlist work as described in subsection 11.4 above, and immediately upon acceptance of the bill of sale for any such improvements by the Town's Administrator as further described in subsection 11.4, the Developer or District as applicable, shall provide the Town with a letter of credit or warranty surety bond in the amount of ten percent (10%) of the approved actual cost of such improvements to secure the twenty-four (24) month warranty for such improvements as set forth in subsection 11.4 above. Following expiration of the Warranty Period and following the Town's Engineer's approval of any correction work, the letter of credit or performance surety bond furnished to the Town shall be released by the Town.

12.3 Delivery of Performance Guarantee by Developer and/or District. In order to secure the construction and installation of the Public Improvements and any required Development Improvements as described in this Agreement, the PUD Development Plan, any Subdivision Preliminary Plan, any Subdivision Final Plat and any subdivision improvements agreement which the Developer or District is responsible, Developer or the District, as applicable, shall furnish the Town with a performance guarantee as described in subsection 12.1 above. Neither the Developer nor the District shall commence any Development work until the performance guarantee is furnished to the Town.

12.4 Letter of Credit Standards; Payment Upon Default. In the event the Developer or the District, as applicable, elects to furnish a letter of credit as a performance guarantee, the initial letter of credit shall be payable at sight to the Town, or its designee, and will bear an expiration date of not earlier than two (2) years from the date of issuance. The Developer or the District, as applicable, shall renew such letter of credit as necessary in order to secure the performance and completion of the Public Improvements and other required Development improvements, for which the Developer or the District is responsible in accordance with this Agreement, without further notice from the Town. If the Developer or the District, as applicable, fails to provide to the Town a satisfactory substitute letter of credit at least thirty (30) days prior to the expiration date of a letter of credit previously delivered, the Town may draw the full amount of the existing letter of credit and hold the proceeds thereof as a performance guarantee deposit. The proceeds of such draw shall be deposited in a federally insured interest bearing account, and all interest earned thereon shall be added to and become part of the performance guarantee deposit. The letter of credit shall be payable at any time upon presentation of (a) a sight draft drawn on the issuing bank in an amount to which the Town is entitled pursuant to this subsection 12.4 and subsection 12.5 of this Agreement; (b) an affidavit by the Town's Mayor stating the Developer or the District, as applicable, has failed to complete construction of improvements in accordance with this Agreement or any applicable subdivision improvements agreement or any development permit improvement agreement, has received notice of such failure as required by subsection 12.8 below and has failed to cure such failure within the time set forth in subsection 12.8; or the Developer or the District, as applicable, has failed to renew the letter of credit as required herein; and (c) the original letter of credit. The letter of credit shall be in good and sufficient form, as approved by the Town's Attorney. In the event of a failure by the Developer or the District, as applicable, to complete construction or renew the letter of credit as required herein, the issuer of the irrevocable letter of credit shall be authorized to disburse funds upon written request by the Town showing the proposed payee and the amount to be paid. Copies of any such requests shall be sent to the Developer and the District at their last known addresses.

12.5 Payment of Performance Surety Bond Upon Failure to Perform. In the event the Developer or the District, as applicable, elects to provide a performance surety bond as its performance guarantee to secure the construction and completion of the Public Improvements and other required development improvements, the performance surety bond shall be payable at any time upon presentation of (a) an affidavit by the Town's Mayor stating the Developer or the District, as applicable, has failed to complete construction or the Public Improvements or other required Development improvements in accordance this Agreement, or any subdivision improvements agreement or development permit improvements agreement, has received notice of such failure as required by subsection 12.8 below and has failed to cure such failure within the cure period set

forth in subsection 12.8. Copies of any such requests shall be sent to the Developer and the District, as applicable, at their last known addresses.

12.6 Partial Release of Performance Guarantee. Upon completion of portions of the applicable Public Improvements and other required Development Improvements by the Developer or the District, as applicable, and evidence of a detailed cost breakdown of the completed improvements, the amount of any letter of credit or performance bond issued pursuant to the requirements of this Section 12 may be reduced by a percentage, which shall be determined by dividing the actual costs for the completed portions of the applicable improvements by the total estimated costs for all of the improvements. Upon completion by the Developer or District of all of the required improvements, for which the Developer or the District is responsible, and upon final inspection and approval by the Town's Engineer of such improvements, the Town Board shall authorize the reduction of the amount of any letter of credit or performance bond to ten percent (10%) of the approved actual cost of such improvements, unless a separate warranty bond is provided in which case the letter of credit or performance bond shall be fully released.

12.7 Full Release of Performance Guarantee. Any performance guarantee or warranty guarantee issued pursuant to this Agreement shall be fully released and discharged upon expiration of the twenty-four (24) month Warranty Period, as described in subsection 8.5 above and the correction of any defects discovered during such Warranty Period.

12.8 Notice of Failure to Complete Construction. Upon the Developer's or the District's failure to complete construction of all of the required Public Improvements and other required Development improvements in accordance with this Agreement, the PUD Development Plan, any Subdivision Preliminary Plan or any Subdivision Final Plat; any applicable subdivision improvements agreement or any applicable development permit improvements agreement; and all other applicable plans, drawings, specifications and other documents submitted by the Developer or the District to the Town, as approved; and applicable Uniform Non-Discriminatory Regulations of the Town, within the time periods set forth in this Agreement, the Town's Mayor may give written notice to the Developer or the District, as applicable, of the nature of the failure and an opportunity to be heard before the Town Board concerning such alleged failure to Complete Construction. If such failure has not been remedied within thirty (30) days of receipt of the notice or the date of any hearing before the Town Board, whichever is later (or such reasonable time as is necessary to Complete Construction provided that the Developer or the District, as applicable, is diligently pursuing Completion of Construction), the Town's Mayor may then give written notice to the Developer or the District, as applicable, and the issuer of any letter of credit or surety on any performance bond, or an escrow agent appointed pursuant to an escrow and disbursement agreement, that the Town, as agent for the Developer or the District, as applicable, is proceeding with the task of installing the required Public Improvements or other Development Improvements for which the Developer or the District is responsible in whole or in part.

12.9 Power of Attorney Granted by Developer and District. In the event the Developer or the District, as applicable, fails to complete construction as required by this Agreement, the Developer and the District hereby designate and irrevocably appoint the Mayor of the Town of Eagle, Colorado as their attorney-in-fact and agent for the purpose of completing all of the improvements required by this Agreement or any future subdivision improvements agreement or

any applicable development permit improvements agreement or for restoring any disturbed property. This Agreement shall be filed in the office of the Clerk and Recorder of Eagle County, Colorado, and shall constitute constructive notice of this Agreement and the power of attorney provided herein. This Agreement and power of attorney contained herein may be enforced by the Town pursuant to all legal and equitable remedies available, including an action for specific performance in a court of competent jurisdiction.

12.10 Increase in Amount of Performance Guarantee. If more than one hundred eighty (180) days elapses between the time of delivery of the performance guarantee and Start of Construction of the improvements by the Developer or the District, as applicable, the Town reserves the right to require a reasonable increase in the amount of the applicable performance guarantee, if necessary because of estimated increased costs of construction.

12.11 Cost Estimate Not Binding. The purpose of the cost estimate described in subsection 9.1 above is solely to determine the amount of security required and may be revised from time to time to reflect the actual cost. No representations are made as to the accuracy of these estimates and the Developer and the District, as applicable, agree to pay the actual cost of all such Public Improvements and other required Development improvements for which it is responsible. Neither the estimated costs nor the amount of the performance guarantee establishes the maximum amount of the Developer's or the District's liability.

12.12 Attorneys Fees. If any legal proceedings are commenced concerning the Town's election to complete the Public Improvements and/or other required Development improvements, as agents for the Developer or the District, and if the Developer or the District, as applicable, does not prevail in such legal proceedings, the issuer of any letter of credit, any escrow agent or surety, as well as the Town shall be entitled to recover their reasonable attorney's fees, including legal assistant's fees, incurred therein from the Developer or the District, as applicable.

SECTION 13
INDEMNIFICATION AND INSURANCE

13.1 Indemnification By Contractors. To the extent permitted by Colorado law, any contractor employed by the Developer or the District who performs work within rights-of-way or easements dedicated to the Town or within other property owned by the Town shall indemnify and hold harmless the Town, its officers, and employees, insurers, and self-insurance pools, from and against all liability, claims, and demands, for injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with work performed by such contractors for the Developer or the District within Town rights-of-way, easements or other property, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of such contractor, any subcontractor of the contractor, or any officer, employee, representative, or agent of such contractor or of any subcontractor of the contractor, or which arise out of any workers compensation claim of any employee of the contractor or of any employee of any subcontractor of the contractor. The contractors shall agree to investigate, handle, respond to, and provide a defense for and defend

against, any such liability, claims or demands at the sole expense of such contractors. The contractors shall also agree to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

13.2 Insurance Required. Any contractors employed by the Developer or the District to perform work within rights-of-way or easements dedicated to the Town or within any other property owned by the Town, shall agree to procure and maintain, at their own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by such contractors pursuant to subsection 10.1. Such insurance shall be in addition to any other insurance requirements imposed by the Developer, the District or by law. Any such contractors shall not be relieved of any liability, claims, demands or other obligations to be assumed pursuant to subsection 10.1 by reason of their failure to procure or maintain insurance, or by reason of their failure to procure or maintain insurance in sufficient amounts, durations, or types.

13.3 Nature and Amounts of Insurance. Any contractor employed by the Developer or the District to perform work within rights-of-way and easements dedicated to the Town or other property owned by the Town shall procure and maintain, and shall cause any subcontractor of such contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with an insurance company authorized to do business in the State of Colorado and which has a general policy rating of A- or better and a financial class of VII or better, as rated by A.M. Best Company (or if a rating of A.M. Best Company, Inc. is no longer available, a comparable rating from a similar or successor service). All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations to be assumed by such contractors pursuant to subsection 10.1. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

13.3.1 Workers compensation insurance to cover obligations imposed by applicable Colorado law for any employee engaged in the performance of work, and Employers' Liability insurance with minimum limits of $500,000.00 each accident, $500,000.00 disease-policy limit, and $500,000.00 disease-each employee. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this subsection.

13.3.2 General Liability insurance with minimum combined single limits of $1,000,000.00 each occurrence and $1,000,000.00 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual, and employee acts), blanket contractual independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

13.3.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than $1,000,000.00 each

occurrence and $1,000,000.00 aggregate with respect to each of a contractor's owned, hired or non-owned vehicles assigned to or used in performance of services within the Town's rights-of-way, easements and other property. The policy shall contain a severability of interests provision. No additional insured endorsement to the policy required by this subsection shall contain any exclusion for bodily injury or property damage arising from completed operations.

13.3.4 The policies required by subsections 10.3.2 and 10.3.3 above shall be endorsed to include the Developer, District and the Town, its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any insurance pool of the Town, shall be excess and not contributory insurance to that provided by the Developer's or the District's contractors. No additional insured endorsement to the policy required by subsection 10.3.1 above shall contain any exclusion for bodily injury or property damage arising from completed operations. A contractor shall be solely responsible for deductible losses under any policy required above.

13.3.5 The Developer or the District, as applicable, shall provide the Town with a certificate of insurance to be completed by the contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify the construction contract and shall provide that the coverages afforded under the policy shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town.

13.3.6 General liability and worker's compensation insurance for the Town and the Developer, the District and contractors of the Developer or the District required hereunder may be provided under controlled insurance programs.

13.4 Indemnification by Developer and District. In addition to the indemnification required in subsection 10.1, the Developer and, to the extent permitted by law, the District hereby expressly agree to indemnify and hold the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity, excluding Town officers, agents or employees, in connection with, or on account of the performance of the Public Improvements within the Development and elsewhere by such party as applicable, or its agents, contractors or employees pursuant to this Agreement, except to the extent due to the Town's willful misconduct. The Developer and the District further agree to aid and defend the Town in the event that the Town is named as a defendant in any action concerning the performance of work by the Developer or the District, or their agents, contractors or employees pursuant to this Agreement except where such suit is brought by the Developer or the District, as applicable. Neither the Developer nor the District shall be considered an agent or employee of the Town for any purpose.

13.5 Governmental Immunity. The Parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision contained in this Section 10, the monetary limitations or any other rights, immunities, and protections provided by the Colorado

Governmental Immunity Act, Sections 24-10-101, *et. seq.*, C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or their employees.

SECTION 14.
DEDICATION AND IMPROVEMENT OF PARKS AND OTHER PUBLIC LANDS

As a matter of contract, and as a condition of the Town's annexation of the Property, Developer shall dedicate or convey the following described parcels, at no cost, free and clear of all liens and encumbrances, and further described in Exhibit ____ attached hereto and incorporated herein by this reference:

14.1. Brush Creek Road Right-of-Way. Developer shall dedicate to the Town, at the time of approval of the first Subdivision Final Plat for Haymeadow, by the Town Board, a thirty foot (30') wide right-of-way parallel and adjacent to the existing Brush Creek Road right-of-way. This right-of-way dedication shall be made in all areas where the Haymeadow Propery is adjacent to the Brush Creek Road right-of-way. The Parties understand that the purpose of this right-of-way dedication is to allow for future improvements including but not limited to: safety improvements to Brush Creek Road, capacity improvements to Brush Creek Road, utility installations, and recreation trail construction.

14.2. Upland Open Space. Developer shall dedicate or convey to the Town the Upland Open Space, identified as Parcel No. ____ on Exhibit ____ for public open space purposes, at the time of approval of the first Subdivision Final Plat by the Town Board.

14.3. Fire Station Property. The Developer shall dedicate or convey to the Greater Eagle Fire Protection District a parcel containing approximately 3.029 acres, more or less, identified as Tract I on Exhibit ____ for the construction and operation of a fire station and related uses. Said parcel shall be dedicated or conveyed at the time of approval of the first Subdivision Final Plat by the Town Board.

14.4. Haymaker Trail. The Developer shall dedicate or convey to the Town the Haymaker Bicycle and Pedestrian Trail, identified as Tract ____ on Exhibit ____, for use by the general public for bicycle and pedestrian trail purposes, at the time of approval of the first Subdivision Final Plat by the Town Board.

14.5. Wildlife Corridor. The Developer shall dedicate or convey to the Town for wildlife protection purposes, the area described as Tract ____ on Exhibit ____, at the time approval of the first Subdivision Final Plat contained in Neighborhood D of the Haymeadow PUD by the Town Board.

14.6. Willow Tree Corridor. The Developer shall dedicate or convey to the Town the area known as the Willow Tree Corridor, identified as Parcel ____ on Exhibit ____, for wildlife protection and open space purposes, at the time of approval of the first Subdivision Final Plat by the Town Board.

14.7. Ouzel Park. The Developer shall dedicate or convey to the Town the area known as Ouzel Park, containing 20.5 acres, more or less, identified as Tract H on Exhibit ____, for public park

and recreation purposes, at the time of approval of the first Subdivision Final Plat by the Town Board.

14.8. Wetland Open Space. The Developer shall dedicate or convey to the Town an area known as the Wetlands Open Space, containing approximately 24 acres, more or less, identified as Tract ____ on Exhibit ____, for public open space purposes, at the time of approval of the first Subdivision Final Plat by the Town Board.

SECTION 15.
SCHOOL/RECREATION LAND DEDICATION

As a matter of contract, and as a condition of the Town's annexation of the Property, the Developer shall dedicate or convey to the Town, at no cost, free and clear of all liens and encumbrances, a school/recreation parcel containing 32.733 acres, more or less, identified as Tract I on Exhibit ____, for public school and recreation purposes. Upon such dedication, the Parties acknowledge that Developer will have fully complied with the requirements of Section 4.13.065 of the Municipal Code concerning school land dedication or the payment of a fee in lieu of dedication. The Parties understand that in accordance with an intergovernmental agreement to be entered into between the Town and the Eagle County School District, the Town will, upon request from the School District, convey a portion of the parcel to the School District, at no cost, free and clear of all liens and encumbrances, for the purposes described in Section 4.13.065 (C) of the Municipal Code. In the event the Eagle County School District provides notice to the Town that it does not intend to use the parcel for such purposes, the Town shall sell the portion of the parcel that would have been conveyed to the School District to a third party. All proceeds from such sale shall be paid to the School District and shall be used for the acquisition of other school land or for the construction or expansion of school facilities. The Developer shall have the right of first refusal to purchase such property. Following written notification by the Town to the Developer that it has received and a bonafide offer to purchase the subject property, the Developer shall notify the Town in writing within thirty (30) days whether or not it intends to purchase the property upon the same price, terms and conditions offered by the third party. In such an event the Town shall convey the subject property to the Developer.

SECTION 16.
LOCAL EMPLOYEE RESIDENCY PROGRAM

As a matter of contract and as a condition of the town's annexation of the Property,, the Developer shall satisfy Town's Local Employee Residency Program ("LERP") by the implementation of the Haymeadow LERP Housing Plan submitted to and approved by the Town, attached hereto as Exhibit ____, and incorporated herein by this reference.

SECTION 17
PAYMENT OF STREET IMPROVEMENT RECAPTURE FEES TO WEST EAGLE RANCH, LLC

The Parties acknowledge that on or about November 13, 2007, the Town and West Eagle Ranch, LLC, a Delaware limited liability company, entered into a Memorandum of Understanding and Infrastructure Improvements Recapture Agreement, attached hereto as Exhibit ____, and incorporated herein by this reference. Developer also acknowledges that under such Recapture Agreement, the Developer is required to pay to the Town a prorata share of the cost incurred by West Eagle Ranch, LLC for improvements known as the Sylvan Lake Road extension and U.S. Highway 6 access improvements.

In accordance with the Recapture Agreement, the Town Engineer has calculated the prorata share of the costs of the Sylvan Lake Road extension and the U.S. Highway 6 access improvements originally constructed by West Eagle Ranch, LLC based on the number of "trip ends" generated by the Eagle Ranch development at full build out and by the number "trip ends" generated by Haymeadow. Said calculation is contained in Exhibit ____, attached hereto and incorporated herein by this reference.

As a matter of contract, and as a condition of the Town's annexation of the Property, the Developer shall pay to the Town the amount determined by the Town's Engineer, $_____, on or before ten (10) days following the date of Final Approval. The Town shall then pay to West Eagle Ranch, LLC, or its successors and assigns, such amount within ten (10) days after receipt thereof.

SECTION 18
WILDLIFE PROTECTION

Wildlife Corridors. Developer will construct a wildlife corridor as required by Section 3.2.9 of the PUD Guide, as the same may be amended from time to time with consent of the Town. No other requirements regarding wildlife protection are imposed by this Agreement.

SECTION 19
DISTURBANCE OF OPEN SPACE AREAS

19.1. Unplatted Areas. Areas within the Property that are not contained within an approved Subdivision Final Plat shall be maintained in their present natural state or agricultural production and irrigated as necessary. Provided, however, underground utility construction shall be permitted but disturbed areas must be revegetated to a natural condition subject to Town approval. In addition, the Town acknowledges that certain areas within the Property are presently in agricultural use and production, and all such areas shall be entitled to remain in any form of agricultural use and/or production until such time as such areas are developed in accordance with this Agreement and the Development Plans. The Developer or the Metropolitan District shall develop a plan for review and approval by the Town, for the control of noxious weeds and gophers in all such unplatted areas.

19.2. Designated Open Space Areas. Any designated public or private open space areas within the Property that are disturbed during construction of the Development shall be promptly graded

and successfully revegetated to a natural looking condition by the Developer at its sole cost and expense in a manner approved by the Town.

SECTION 20.
MAIL DELIVERY

Prior to the approval of the first Subdivision Final Plat for the Property, the Developer, together with Town officials, shall meet with representatives of the United States Postal Service concerning the possibility of obtaining home delivery within the Development, a postal annex to serve the Development, and/or the provision of cluster mail boxes within the Development. In completing the final design of the Development, the Developer agrees to incorporate in its Subdivision Final Plat(s) the location and design of facilities reasonably necessary to facilitate home mail delivery or the use of cluster mail boxes within the Development, as may be required by the United States Postal Service.

SECTION 21.
USE OF CHEMICALS

Concurrently with the submittal of its application for the first Subdivision Final Plat, the Developer shall submit a plan to minimize the use of chemicals harmful to the environment, including pesticides, herbicides, and other chemicals. The Town shall review and approve a plan for minimizing the use of chemicals in connection with the Town's review and approval of the first Subdivision Final Plat. Notwithstanding any provision of this Section 21, the Developer or its tenants, agents or other occupants of any portion of the Property that is put to agricultural use or production shall be entitled to use any legal chemicals upon such portion of the Property, including pesticides and herbicides. Such management plan shall include suppression of current weed infested areas and the revegetation of applicable areas.

SECTION 22
OPEN SPACE MANAGEMENT PLAN

Developer or the District, as applicable, shall submit to the Town for review and approval a management plan for all open space areas within the Development concurrently with the submittal of an application for the first Subdivision Final Plat.

SECTION 23
TRANSFER ASSESSMENT COVENANT

Developer shall execute a Transfer Assessment Covenant prior to the conveyance of any residential units. The Transfer Assessment Covenant shall provide for an assessment of not less than six tenths of one percent (0.6%)on the sale and purchase of individual residential dwelling units; provided, however, the Transfer Assessment Covenant shall exempt from the Transfer Assessment: (a) any LERP Units, and (b) sales to affiliates. Proceeds from such Transfer Assessment in the amount of 0.6% shall be paid to the Town within thirty (3) days of receipt by the Developer or property owners association and may be used for such purposes as solely determined by the Town Board. The Town will cooperate with Developer in taking reasonable actions to defend against any litigation brought by a third party against Developer arising from, related or as a result of the imposition of the Transfer Assessment Covenant on residential dwelling units in the Development and the Town agrees to pay the reasonable and necessary legal fees and costs of the Developer for any such defense within thirty (30) days of the date of any bill or statement for such fees or costs.

SECTION 24
MAINTENANCE OF COMMON AREAS, OPEN SPACE, AND DEVELOPMENT IMPROVEMENTS

The Parties understand and agree that the entities shown on Exhibit ____, attached hereto and incorporated herein by this reference, shall be responsible for the ongoing maintenance, upkeep and repair of the common areas, parks, open space, recreation areas, and development improvements shown on Exhibit ____. Provided, however, the Parties may mutually agree in future subdivision improvements agreements to alter such responsibilities for the maintenance, upkeep and repair of such facilities.

SECTION 25.
REIMBURSEMENT OF COSTS

25.1 Development Review Costs. Pursuant to subsection 4.03.080(C)(2) of the Municipal Code, as it may be amended from time to time, the Developer shall pay to the Town the actual costs incurred by the Town, rendered in connection with the Developer's Annexation Petitions, PUD Zoning Plan and PUD Development Plan application. In addition, Developer shall pay to the Town the reasonable costs incurred by the Town in connection with consulting services provided to the Town in connection with the Developer's PUD Zoning Plan and PUD Development Plan application. All costs due and owing shall be paid prior to the effective date of the ordinance approving the PUD. Provided, however, upon request, Developer shall receive detailed invoices reflecting the nature and description of each charge so incurred by the Town. In the event the Developer does not believe that the costs assessed under this Section 25 are reasonable, Developer may appeal such assessment to the Town Board. Following an opportunity for the Developer to be heard, the Town Board shall affirm the appeal or deny the appeal. In addition, the Developer shall pay to the Town fifty percent (50%) of the Town's monthly costs of employing an assistant town planner, in the amount of $2,800.00 per month, to facilitate the Town's review and processing of Developer's Annexation Petitions, PUD Zoning

Plan and PUD Development Plan applications as well as future land use applications. Developer shall only be obligated to pay such costs for the period commencing on August 1, 2011 and again commencing on the date Developer submits its first Subdivision Final Plat application; provided, however, in no event shall Developer be obligated to reimburse the Town for employment of such assistant town planner for an aggregate period in excess of 12 months or an aggregate amount in excess of $3,600.00. Said sums shall be billed by the Town on a monthly basis and Developer shall pay such amounts within thirty (30) days following billing.

25.2 Inspection Costs. Prior to the approval and acceptance of the construction and installation of the required Public Improvements and other necessary Development improvements, the Developer shall pay to the Town the actual cost of all inspections of such improvements as provided in subsection 4.03.080(D)(1) of the Municipal Code, as it may be amended from time to time (the "Inspection Costs"). In the event Developer believes the costs assessed are unreasonable, Developer may appeal such assessment in the manner set forth in subsection 25.1.

SECTION 26
DEFAULT; REMEDIES; TERMINATION

26.1. Default by Town. A "breach" or "default" by the Town under this Agreement shall be defined as (a) pursuant to Section 24-68-105, C.R.S., in effect as of the Effective Date, any zoning, land use or other action or inaction, direct, indirect or pursuant to an initiated measure, taken without Developer's consent, that alters, impairs, prevents, diminishes, imposes a moratorium on development, delays or otherwise materially and adversely affects to a substantial degree the vested property rights of Developer as expressly created under the Development Plan and this Agreement as, limited in Section 3 of this Agreement, or as otherwise permitted under Section 24-68-105, C.R.S., or (b) the Town's failure to fulfill or perform any material obligation of the Town contained in this Agreement.

26.2. Default by Developer. A "breach" or "default" by Developer shall be defined as Developer's failure to fulfill or perform any material obligation of Developer contained in this Agreement.

26.3. Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting Party shall deliver written notice to the defaulting Party of such default, at the address specified in subsection 24.7 below, and the defaulting Party shall have thirty (30) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such thirty (30) day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure.

26.4. Remedies.

26.4.1. If any default under this Agreement is not cured as described above, the non-defaulting Party shall have the right to enforce the defaulting Party's obligations hereunder by an action in equity for any equitable remedy, including injunction and/or specific performance. Only in the event that the remedy of specific performance is not available, either Party may seek an equitable monetary award in accordance with applicable law and as limited by this Agreement in lieu of such specific performance remedy.

26.4.2. The Parties acknowledge that since this Agreement and the Development Plan constitute a development agreement which confers rights beyond those provided by the three (3) year statutory vesting approach described in the Vested Property Rights Statute, in the event of a breach or default by the Town, in addition to any of the foregoing equitable remedies, Developer shall be entitled to: recover from the Town solely those damages that would have been specifically available to Developer as contemplated in Section 24-68-105(1)(c), C.R.S. as in effect on the Effective Date; and cause the Property, or any portion thereof designated by Developer, to be disconnected from the Town.

SECTION 27
MISCELLANEOUS PROVISIONS

27.1. Voluntary Agreement. Developer agrees that the provisions and requirements of this Agreement are entered into with full knowledge, free will and without duress.

27.2. Recordation of Agreement. This Agreement shall be recorded in the records of the Eagle County Clerk and Recorder, and upon recording shall be deemed a covenant running with all the real property described in Exhibit "A", for the benefit of the Town and any real property owned by the Town.

27.3. Enabling Ordinances Required. To the extent required by law and by the terms of this Agreement, the obligations and covenants of the Town are conditional upon the adoption by the Town of appropriate enabling ordinances.

27.4. Attorneys Fees. In the event that any action is filed or maintained by either Party in relation to this Agreement, the prevailing Party shall be entitled to its costs and reasonable attorney fees, including reasonable legal assistant's fees. All rights concerning remedies or attorney's fees shall survive termination of this Agreement.

27.5. Complete Agreement. This Agreement contains all of the understandings, conditions, and agreements between the Parties relating to annexation and development at this time, and no other prior or current representation, oral or written, shall be effective or binding upon the Parties, except for representations made by the Developer, or its agent, or the Town Board and Town staff members at public hearings concerning annexation of the Property and development of the Property, not in conflict with express provisions of the Development Plan or this Agreement.

27.6. Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings

and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

27.7. Notices. All notices required or given by the terms of this Agreement shall be made by certified first class mail, postage prepaid, return receipt requested, to the parties at their addresses listed below. All notices shall be effective upon mailing. These addresses shall remain valid until notice of a change of address is given in accordance herewith.

If to the Town:	Town of Eagle, Colorado Board of Trustees P.O. Box 609 Eagle, CO 81631 Attention: Town Manager
With a copy to:	Sands Law Office, LLC 450 West Avenue, Suite 204 Rifle, CO 81650 Attention: Edward P. Sands, Esq.
If to Developer	Abrika Properties, LLC Attention: Ric Newman
With a copy to:	Greg Perkins, Esq. 710 West Lionshead Circle, Suite B Vail, CO 81657

27.8. No Additional Annexation Conditions Imposed. The Town and the Developer acknowledge and affirm that this Agreement does not impose additional terms and conditions within the meaning of Section 31-12-107(1)(g), C.R.S. To the extent that Section 31-12-107(1)(g), C.R.S. is construed as being ambiguous as to what might be considered additional terms and conditions, Developer, as the owner of 100% of the land described in Exhibit "A", hereby declares that it has voluntarily entered into this Agreement and states that if an election were held, Developer would approve the terms and conditions of this Agreement at such election.

27.9. Waiver of Defects. In executing this Agreement, Developer waives all rights it may have concerning defects, if any, of the form or substance of this Agreement, and the formalities whereby it is executed; concerning the power of the Town to impose conditions on Developer as set forth herein; and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement. Similarly, the Town waives all rights it may have concerning defects, if any, of the form or substance of this Agreement, and the formalities whereby it is executed as well as defects, if any concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

27.10. Colorado Law Applicable. This Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation, validity, and enforceability.

27.11 Jurisdiction of Courts. Personal jurisdiction and venue for any civil action commenced by any of the Parties to this Agreement whether arising out of or relating to this Agreement, a letter of credit, or performance bond will be deemed to be proper only if such action is commenced in the District Court for Eagle County, Colorado. The Developer, the District and the Town expressly waive any right to bring such action in or to remove such action to any other court, whether State or federal.

27.12 District's Performance of Developer's Obligations. The District is hereby authorized and may, in the Developer's discretion, perform any obligation of Developer so long as such performance is in accordance with the Special District Act and other applicable law.

27.13 Waiver. No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

27.14 Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

27.15 Representations of Town Officials. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Municipal Code, and that the Developer or the District, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town or its officers or agents or their designees which is subsequently held unlawful by a court of law, which is in accordance with the law of the State of Colorado. Provided, however, this subsection shall not be construed to limit the rights and remedies of the Parties otherwise provided by law.

27.16 Covenants. The provisions of this Agreement shall be binding on all subsequent owners of the Property as covenants running with the Property, to be released only by the Town, unless this Agreement is otherwise terminated in accordance with its terms or by any Party pursuant to the terms of this Agreement. The benefits and burdens of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the Parties to this Agreement, except as otherwise provided herein.

27.17 Time of the Essence. Time is of the essence with respect to all obligations under this Agreement.

27.18 Rights of Persons not a Party. No person or entity which is not a Party to this Agreement will have any right of action under this Agreement.

27.19. Binding Upon Successors, Assignees. This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the successors in interest or the legal representatives of the Parties hereto. Developer shall have the right to assign or transfer

all or any portion of its interest, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property, including, but not limited to, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property. The express assumption of any of Developer's obligations under this Agreement by its assignee or transferee shall, upon written notice to and approval by the Town, relieve Developer of any further obligations under this Agreement with respect to the matter so assumed.

27.20 Developer's Right to Assign. Except (a) as provided in subsection 23.19 or (b) for a collateral assignment of this Agreement by Developer to Lender, the Developer's rights and obligations hereunder may not be assigned or delegated, except to affiliates without the Town's written consent, which shall not be unreasonably withheld. Any attempted assignment or delegation by the Developer not in compliance herewith shall be null and void.

27.21 Town's Right to Assign. The Town's obligations hereunder may not be assigned or delegated without Developer's written consent, which shall not be unreasonably withheld and any attempted assignment or delegation by the Town not in compliance herewith shall be null and void.

27.22 Counterparts. This Agreement shall be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

27.23 Amendments, Waivers and Consents. No amendment or waiver of any provision of this Agreement, nor consent to any departure here from, shall in any event be effective unless the same shall be in writing and signed by the Parties hereto, or their approved successors and assigns, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

27.24 Provisions Deemed Severable. Except as otherwise provided in this Agreement, if any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision of this Agreement and the rights of the Parties will be construed as if the part, term, or provision was never part of this Agreement.

27.25 No Waiver of Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's or the District's sovereign immunity or governmental immunity under any applicable State law.

27.26. Execution of Other Documents. The parties agree to execute any additional documents and to take any additional actions necessary to carry out this Agreement.

27.27 Recordation of Agreement. The Town shall record a copy of this Agreement in the office of the Clerk and Recorder of Eagle County, Colorado (the "Clerk and Recorder"). In the event this Agreement terminates in accordance with its terms, or is terminated by any Party pursuant to the terms of this Agreement, all Parties shall execute a release, promptly upon request, to be recorded with the Clerk and Recorder evidencing the termination of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

TOWN OF EAGLE, COLORADO,
a municipal corporation acting by
and through its Board of Trustees

By: _____

ATTEST:

Yuri Kostick, Mayor

_____

Sarah Braucht, Town Clerk

ABRIKA PROPERTIES, LLC, a
Florida limited liability company.

By: _____

STATE OF COLORADO)

) ss:

COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by Yuri Kostick, Mayor and Sarah Braucht, Town Clerk, of the Town of Eagle, Colorado, a municipal corporation.

Witness my hand and official seal.

My commission expires: _____

_____

Notary Public

STATE OF COLORADO)

) ss:

COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by _____.

Witness my hand and official seal.

My commission expires: _____

_____

Notary Public

APPROVED AS TO FORM:

_____ _____

Edward P. Sands, Esq. Date

Attorney for the Town of Eagle, Colorado

_____ _____

Greg Perkins, Esq. Date

Attorney for Abrika Properties

EXHIBIT
D

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Suite 2200
Denver, Colorado 80202-9750
303.321.2547 fax 303.399.0448
www.bbcresearch.com
bbc@bbcresearch.com

MEMORANDUM

To: Mr. Jon Stavney. Town of Eagle, City Manager
From: Ford Frick, BBC Research & Consulting
Re: Haymeadow Fiscal Impact
Date: February 10, 2014

This memorandum addresses specific questions presented by the Eagle Town Manager and town council relative to BBC's September 25 *Fiscal Impact Analysis* of the Haymeadow project. The original questions are replicated below. We have grouped questions under topical headings.

Current Taxation Levels

1. *How does one interpret: "projections assume current taxation levels and no significant change in the local retail environment."?*

   The BBC analysis assumes the same retail environment, including the same leakage of retail sales, as exists today. This is the single factor that best explains the project's modest sales tax value. As further explained in the analysis, any improvement or diversification in the local retail environment would produce significant new revenues for the town from the Haymeadow project and the existing local community.

Property Values/Property taxes

2. *On page 7, average home prices are estimated in the BBC study at $374,000 for MFU and $599,000 for SFU. The Stan Bernstein study for the Metro District estimates MFU ranging from $344,000 to $423,000 and SFU from $525,000 to $728,000. Which estimates are most current with the market today?*

   The expected home values were provided by the project developer and are often reevaluated to reflect changing market conditions. BBC had used the most current estimates (August 2013) for the anticipated range of housing products. These values are within the ranges specified in the Metro District analysis, which we understand will be updated as the project moves forward. Home values have very little impact on the fiscal analysis because the town has very modest property tax revenue.

3. *Property tax revenue at the current town mill levy is 2.632, not 4.044 as noted on page 9.*

   The current property tax is 4.044 and we understand that it will remain so until 2017. We assume that there will be an effort to reinstate this levy. If the additional mill levy is not

reinstated by the voters, the town will have to reduce general fund service levels by about $100,000 or about 2.5 percent of the current general fund budget.

Household Income

4. *Current median home price in Eagle is $274,800. Current AMI in the county is $72,060, and $62,750 in town. Page 11 notes that the average family earning estimated for Haymeadow is $92,692/year. What is the range of family income required to qualify for the average home or average multi-family unit as priced above, and what AMI % does this target?*

   The median income assumed for Haymeadow households is the average amount necessary to afford homes in the anticipated Haymeadow price ranges. As a rule, families can spend 1/3 of their income on housing, suggesting mortgage payments (PITI) of about $30,000 per year or about $2,500 per month. A $600,000 home, with 20 percent down and a 4.25% will require monthly payments of about $2500 (30 year mortgage). Younger, less established households will likely choose lower priced, multifamily products. Established families, perhaps with larger down payments and multi-workers per household, are candidates for the larger single family. The property owners foresee a growing market for existing Eagle County households moving down valley to Eagle. These persons, who may have been long time property owners up-valley, may be able to pay a large share of home costs in cash. In addition, the owner's market information suggests a growing share of younger, new home buyers are relying on their parents for down payment assistance.

Sales Tax Generation

5. *If there is no increase in retail capture rate, and the estimated per household sales tax capture estimated as $13,790 for new Haymeadow residents, what is the 2012 town sales tax capture per household?*

   We assume that current and future residents will have similar spending behaviors and that Eagle's limited retail base restricts local capture rates regardless of income levels. The data on typical consumer spending patterns are from the US Department of Labor – Bureau of Labor Statistics Consumer Expenditure Survey (CE) www.bls.gov "Table 1202. Income before Taxes: Consumer Expenditure Survey, 3rd quarter 2011 through 2nd quarter 2012

   We averaged the spending category allocations for two categories of income: $50,000-$69,999 and $70,000 and above.

   BBC estimated Eagle resident household spending by category (Figure 6, page 12). For instance, we assumed that local residents spend 75 percent of their household grocery purchases within the town of Eagle, but only 10 percent of household furnishings and equipment is captured locally. Estimates were based largely on store availability and regional competitive options. A large share of household spending is not taxable. In total, we estimated that the town will collect taxes on about 21 percent of Haymeadow household spending, resulting in $551 per household in tax receipts.

   We used a second method to test the reasonableness of these assumption.

The figure below show the latest year of Eagle sales data and BBC's estimates of what share of these sales are derived from the local resident household spending. It should be noted that besides Eagle resident sales, Eagle benefits from highway related traffic that stops for food and supplies; a large non-resident employee base who commutes into town and may purchase lunches and supplies; persons doing business in town who spend on food and beverage; and a number of motels, restaurants and events that draw nonresident visitors.

Eagle Sales Tax Collection by Category: Percent attributable to Eagle Residents

Expenditure Category	2012 Expenditures	% Attributable to Eagle Residents	$ Attritubale to Eagle Residents
FOOD	$ 906,214	70%	$ 634,350
RETAIL	349,025	35%	122,159
RESTAURANT & BARS	546,324	35%	191,214
LIQUOR STORES	123,567	80%	98,854
BUILDING MATERIALS	144,020	50%	72,010
HOTELS	196,768	0%	-
UTILITIES	393,738	80%	314,991
AUTO REPAIR	72,712	70%	50,899
MISCELLANEOUS	50,067	50%	25,034
TOTAL	$ 2,782,439		$ 1,509,510
	Number of Eagle Housing Units		2,400
	Tax Receipts per Unit		$ 629

Source: BBC Research & Consulting.

As noted, BBC's original process lead to the smaller capture rate estimate used in this study, while the second methodology supports a higher capture rate ($629/household versus $551), which would suggest a more tax productive project than our model indicates. BBC used the lower, more conservative estimates in our calculations.

6. *Sales Tax Revenue Figure 6 (page 12) assumes average family earnings of $92,000 per year and references a BLS Consumer Expenditure Survey.*

   a. *Please explain in more detail the capture rates assumed for various categories.* (see above)

   b. *Please explain how the $12,451 for mortgage and rent relates to the other line items. It would appear that the average resident would be paying more than $12,451 on mortgage and rent. Does this impact the amount of discretionary income available for other line items and the net sales tax revenue to the Town?* (Higher expenses for housing would affect sales tax generation and sales capture rates, which is one reason we chose the more conservative capture estimates)

c. *Does the entertainment category include dining at restaurants?* (no, dining is in "restaurants")

7. *Town does not collect taxes on utilities so these should not count towards taxable spending*

The town does not collect on water and sewer sales. It does collect taxes on cable TV, communications and gas and electric. As noted above, *"utilities"* is one of the larger categories of current town collections.

8. *Does any of this change the 35% estimated local spending capture and by extension the table on page 17?*

9. *A statement is made on page 13 that "BBC estimates that the Town is currently capturing about 35% of resident local taxable spending..." Please provide further information behind the methodology of this estimate.*

As explained above, we believe the household spending capture rate used is conservative but any change in the capture rates by category will change the sales tax generation by the project and thus its fiscal impact.

This "35%" statement refers to Eagle resident spending as a percent of taxable household spending. A better way to express this would have been that Eagle captures about 21 percent of all general household spending (Figure 6: $67,097/$13,789 = 20.6%)

10. *Related to Figure 10, please provide additional explanation of the column entitled "Percent Variable" modifier, as well as a rationale for the 50% entry on the table for this column related to Buildings and Grounds.*

Town service delivery levels are defined based on current town costs per household, which are shown in Figure 10. Two adjustments are made: *Percent Variable* and Percent *Attributable to non-residential demand.* These are explained below:

Non-residential demand: Town service costs are influenced by all land uses including commercial uses, not solely by resident use. Service costs are also affected by persons who visit the community, or pass through the community, as well as by residents. For instance, the downtown commercial district requires street maintenance, police protection and a share of all general administration time and expense. The area has been upgraded with public investment and benefits from multiple town services. Similarly, a large share of police incidents involves the commercial district near the highway, which has also been the recipient of considerable town investment for street system expansion and maintenance. Even pass through traffic to the Eagle County airport presents costs to the community for policing and streets. This allocation to non-residential demand (5-10% depending on category; Figure 10) represents those non-residential expenses.

Variable and fixed costs. Cities and towns, like private enterprises, have fixed costs and variable costs. For instance, the general administration of the community, e.g. the costs for city manager, city clerk, finance director, city council is relatively fixed—a community

doesn't hire a second finance director as it grows although it is likely to hire an assistant or lower cost clerk as demand increases. We've assumed new households demand will represent 80 percent of current town per unit costs for general administration and street maintenance and 90 percent for police services. Police service costs tend to have a larger variable component and expand more in line with general population growth than other services. Building and ground cost, which is largely supporting parks and town hall maintenance, are held at 50 percent of current per unit measures, largely because Haymeadow will build and maintain its own park system placing very little burden on the existing facilities.

11. *FYI: Also related to Figure 10, the Streets section has an expense for repair and replacement of streets related to recent expenditures. This is a significantly underfunded category and has been for a decade. The 2012 budget is not a good estimate of road repair and replacement costs. What is estimated would possibly cover the incremental cost of 3 additional street FTE but no additional equipment. In public safety what is estimated may cover the cost of three additional FTE. Buildings and Grounds also does not cover the cost of facility replacement the budget... just noting that these remain unfunded and therefore hidden in the analysis of General fund expenditures related to the future project.*

    Current levels of expenditures may be less than desired, but this is the town's current level of service. The model assumes new residents will share town expenses at current service levels and will share the expense if taxes are raised and service levels increased. Without new development and new residential growth any deferred costs, such as street maintenance, will be a burden on the existing community. With new residential growth, and hopefully new commercial development as well, the existing community will have a larger tax base to share these upgrade costs.

    The Haymeadow development also provides $1016 per SF units and $646 per MF units in street impact fees, which that in total produce over $ which is available for the expansion of the city's current street system (see below).

Use Taxes and Street Impact Fees

On page 7 of the Analysis it is stated that multi-family units are estimated to have a total market value of $374,000 per unit and single family a value of $599,000 per unit. On page 20 it is stated that for the purpose of estimating the Use Tax it is assumed that 40% of the total unit value constitutes the value of the construction materials, and in accordance with Town code this is the amount the 4% Use Tax is assessed upon. Therefore, Using these parameters my calculation of the total Use Tax collected from the Haymeadow multi-family units is as follows: (345 MF units) X ($374,000 per MF unit) X (40% for value of building materials) X (4% Use Tax Rate) = $2,064,480. Calculating the Use Tax collected from the Haymeadow single family units in the same way yields an additional $4,236,128 for a Total Use Tax collected of $6,300,608. But, Figure 12 on page 22 of the Analysis shows a Cumulative Total Use Tax of $7,479,278. This is a significant discrepancy with impacts roadway and traffic related costs, please walk us through the number.

Our model assumes an average cost of $374,000 per MF unit and $599,000 per single family unit. We then reduce the values by 15% (MF) and 20% (SF) to account for land costs. Of the remaining amounts, 60 percent is material and 40 percent labor, which results in a use taxable value of over $186 million over the course of the project. These values are subject to a 4 percent use tax and result in the figure shown in the report. The calculations are shown below:

Use Tax Calculation Example

Source:
BBC Research & Consulting.

Use Tax Calculation Methodology	Example Calc
Completed Unit Market Value	$ 599,000
x	
80% Single Family / 85% Multi-Family (removal of land cost)	$ 479,200
x	
60% (portion of net value that is construction materials)	$ 287,520
x	
4% Use Tax per unit	0.04
=	
Total Use Tax on Construction Materials - One SF Unit	$ 11,501

12. *Street Impact Fees are estimated to be $670,650. That added to the estimated use tax do not appear to add up to the $8.1million in funds dedicated to capital improvements noted on page 21 (see question 10).*

    The calculations for street impact fees and use tax are shown in Figure 12 and add to $8.15 million.

13. *The Real Estate Transfer Assessment Revenue Stream (RETT) included in the first paragraph conclusion and noted on page23 to go to the town general fund—is it included before or in response to the net annual deficit of about $93,000 calculated by the study?*

    The ending year deficit is prior to the application of the RETA. The ¼ cent RETT is used to balance the general fund account after the project is complete. During construction the RETA presents a considerable bonus to a fund that is already in or near the black during most of the construction period.

14. *What is the plan for the remaining .75% RETT funds?*

    We understand that use of these funds is under discussion with applicant.

The following questions are from Trustee Resa and were submitted separately. We have responded to the questions addressed to us.

1. *Could the applicant and/or staff clarify the build-out period? I thought comments have been made about 20 years. But the financial analysis shows 15 years and the metro district shows 17 years. Shouldn't the analysis/plans compare similar build-out periods as we consider phasing, improvements, and financial impacts?*

We have assumed a 15-year development period. It may be longer, but the pace of development (within reason) does not affect this analysis, as costs and revenues are equally affected as the pace changes.

2. *Just a small thing but how is it calculated that Glenwood Springs is 15 miles west of Eagle on page 1 on the fiscal analysis? (I did this on google maps and it shows 31.7 miles. It has been awhile since I've driven to Glenwood Springs but it seems more than 15 miles.).*

   Glenwood is about 32 miles from Eagle, not the 15 cited in the report.

3. *Could the applicant generally explain how the current fiscal analysis shows a considerable less of a net deficit than the previous analysis? On the previous sketch plan fiscal analysis, page 17 under net revenues, it says the project will produce a net deficit of $364,000 per year at current service levels. But on the latest fiscal analysis, page 20 under net revenues, it says it will produce a net deficit of $98,000. This is hard to connect given the following changes from the sketch plan time period including these items.*
   1. *# of units decreased*
   2. *Costco revenue sharing eliminated*
   3. *Increase in costs (for example – annual salary of $42,000 in current study page 25 compared to $37,000 in previous study page 20)*
   4. *Family earnings dropped (current study shows earnings dropped of $92,692 page 11 compared to 107,000 in previous study, page 8)*

   That is, what factors contributed towards making this such a dramatically less deficit if costs have gone up, sales tax gone down, and the number of units decreased.

   Because every unit is a cost to the town, the large reduction in units from the earlier scenario proposed for Haymeadow works to reduce the net deficit. The change in mix between single family and multi-family also influences this effect. More importantly, over the last few years, overall town service costs have declined not risen and the number of town units has increased, which results in a lower cost per unit, which is then applied against fewer units—thus the reduction in costs.

4. *Does staff agree that 90% of the project will be full-time residents? Does that go along with ER and/or other parts of town?*

   This was discussed and general consensus that this is a reasonable expectation occurred at the city council hearing on January 28th.

5. *Can staff confirm the mill levy rates the applicant references on fiscal analysis page 9 of 4.044?*

   See mill levy comment above.

6. *On the current fiscal analysis page 7, it references an average price of units including the single family home of $599,000. On the metro district financial plan word document, page 2, it references an average price of $728,000 for single family homes. Why the difference? Also, since both documents reference average prices, what is the expected price of the LERP units?*

See similar discussion above.

7. *Fiscal chart page 10 page 19 of current fiscal analysis:*
    1. *What is the plan check and building services line item starting in Year 7?*

These are revenues from plan check and building permit services. Revenues are derived from the city's cost schedule, which is tied to building construction costs and is on the town's web site. We have assumed that the cost of providing these services will require 90 percent of associated revenues, thus the town garners a small benefit from building permit activitiies.

EXHIBIT
E

HAYMEADOW - NEIGHBORHOOD A1 DENSITY REVISIONS DIAGRAM
02.28.2014

EXHIBIT
21

Pam Boyd
pboyd@eaglevalleyenterprise

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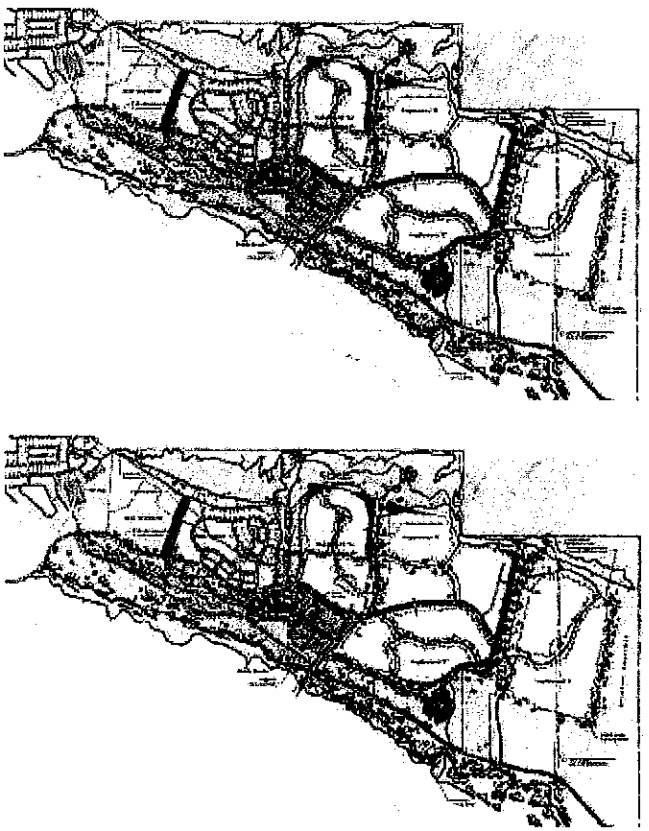
February 19, 2014

Traffic, finances and density — the big questions for proposed Haymeadow project



The Haymeadow plan, shown above, calls out the various neighborhood in the 660-acre property. The areas outlined in red were proposed locations for additional units, but Eagle officials have indicated that additional units can be planned in Neighborhoods A and B, but not in Neighborhood C.

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As you look southeast from the Eagle Pool and Ice Rink, the Brush Creek Valley expands and a large meadow is positioned for development.

How will the residents of this new neighborhood get to their homes and who is going to pay for the needed traffic improvements? How will the existing town absorb the added costs and responsibilities associated with this new neighborhood's streets and amenities? How many people are we talking about adding to the town?

As the proposed Haymeadow project winds its way through the town's review process these issues of transportation, finances and density have emerged as primary concerns for both the town and the developer.

Abrika Properties — a partnership of Ric Newman and Alan Cohen — has proposed Haymeadow as a 787 residential unit development planned at the 660-acre property south of the Eagle Pool and Ice Rink. The plan includes 385 acres of natural open space, developed parks and trail corridors along with a new school site. The detailed plan for "Neighborhood A" — the first phase for the Haymeadow development — is currently before the Eagle Town Board for development review and annexation.

Traffic concerns

If 787 new households are going to be built in the Brush Creek Valley, the town has been adamant that traffic improvements must be made to accommodate them. The foremost traffic improvement the town will require is construction of the Brush Creek Road extension — a new road that will be built from the current Brush Creek Road/Capitol Street three-way stop. The road will be located south of the houses located off of Bull Run in the Bull Pasture neighborhood and north of the Bull Pasture Townhomes. It will continue through the former U.S. Forest Service property and connect to U.S. Highway 6.

It is expected to cost $3 million.

The town has told the Haymeadow team they will be responsible for the design, right-of-way acquisition and construction costs for the road. Additionally, the town wants the developers to contribute $700,000 toward a study required for improvements to US6 and as outlined in Eagle's regulations, Haymeadow will be paying approximately $671,000 in street improvement fees.

"This project has a lot of expenses associated with it," said Newman.

He has told the town Haymeadow is wiling to commit to paying those costs in exchange for two issues — relief from the town's Local Employee Residency Program requirements and an additional 50 units to the overall density at Haymeadow.

On the subject of LERP, the town has indicated it isn't willing to cut back the total number —80 LERP residences — but it would be willing to consider changes in the size and location of the units. As for the additional 50 units, the town has expressed a willingness to consider the density increase, provided the units are distributed in neighborhoods A and B. (See accompanying map for detail).

But while the town and the developer are inching toward an agreement regarding off-site road issues, a new debate has surfaced about ownership of the roads within the subdivision.

Real Estate Transfer Tax

As part of its development plan, Haymeadow plans a 1 percent real estate transfer tax that will be imposed when homes are sold. The developer has proposed that 60 percent of that tax go to the homeowners association to pay for on-going costs and 40 percent go to the town to help pay for long-term street maintenance and other costs. But the town isn't sure if it wants to take over ownership of Haymeadow's roads and could, instead, leave that responsibility to the metropolitan district that will be created to finance the up front construction of the Haymeadow. As a matter of practice, in the past the town has always assumed ownership of the roads as various subdivisions were annexed into the community.

In its consideration of the proposal, Eagle town staff concluded that the incremental cost increase to the town for service to the Haymeadow property will be at least $155,000 per year for operation and at least $160,000 per year for pavement maintenance. If the real estate transfer tax is earmarked as the sole source for these improvement dollars, the town would need to collect 64 percent of the 1 percent real estate transfer tax. However, if general fund revenues, which are also expected to increase with the Haymeadow development are tapped, 33 percent of the 1 percent fee could close the gap.

At the last town board meeting, the issue resulted in a 3-3 split with one member of the board missing. The issue will be again addressed later this month.

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