

DEVELOPMENT AGREEMENT
Hunter's Reserve Plaza

THIS AGREEMENT is made and entered into this 15th day of March, 2022.

1. Parties.

The parties to this Agreement are the City of Evans, a Colorado home rule municipality (“the City”) and Hunters Reserve Plaza I, LLC, a Colorado limited liability company (Lot 3) and Hunters Reserve Plaza II, LLC, a Colorado limited liability company (Lot 2B) (together “Developer”).

2. Recitals.

- a. Developer is the owner of certain real property located in the City of Evans, Colorado, legally described and depicted on Exhibit A (Legal Description) attached hereto and incorporated herein (the “Property”).
- b. Developer submitted to the City an application for approval of a Site Plan to be known as Hunter's Reserve Plaza and shown on the Site Plan, (“the Site Plan”) attached as Exhibit B.
- c. The Development subject to this Agreement shall be titled Hunter's Reserve Plaza. The Development is an approximately 2.81-acre site located in the area depicted on Exhibit B. The Developer contemplates the Development will be used for Retail Uses.
- d. Developer acknowledges that development of the Site Plan will necessitate providing infrastructure improvements and public services, will contribute to the economic growth of the City, and will increase future tax revenues received by the City, and falls within a general class of development projects for which economic incentives will serve a lawful public purpose.

NOW THEREFORE, in consideration of the premises, mutual covenants and obligations contained herein, the sufficiency of which is acknowledged, the parties mutually agree as follows:

3. Definitions.

As used in this Agreement, unless specifically stated otherwise, the words and phrases used shall have the meaning as defined in the City Code. For the purpose of this Agreement the following words and phrases shall have the definitions provided for below:

- a. The term “Agreement” refers to this Development Agreement.
- b. The term “City Code” refers to the Municipal Code of the City of Evans, as adopted and as amended from time to time by the City Council.
- c. The term “City Official” refers to and includes the City Manager, Assistant City Manager, City Attorney, City Treasurer, City Engineer, Community Development Director, and their designated representatives.

- d. The term “Developer” initially refers to Hunters Reserve Plaza I, LLC and Hunters Reserve Plaza II, LLC, its agents, representatives, or any other party authorized by the City of Evans to provide services, construction, or maintenance of any Improvements, as well as any entity that subsequently acquires a fee simple interest of record in any portion of the Property as a transferee, grantee, assignee or successor of Hunters Reserve Plaza I, LLC and Hunters Reserve Plaza II, LLC. “Developer” shall collectively include all of the foregoing persons or entities, all of whom shall be jointly and severally liable for the obligations and liabilities of the Developer to the extent such liability relates to the portion of the Property they purchase or otherwise obtain.

Notwithstanding the foregoing, the term “Developer” shall not include (1) purchasers of individual subdivided lots or individual residential lots or units or individual non-residential space in an approved Final Plan or Final Plat, or (2) holders of a security interest in the Property or a portion thereof.

- e. The term “Development” refers to the overall plan of the Developer to develop the Property as referenced in Exhibit B.
- f. The Term “Improvements” refers to the improvements more particularly described in Exhibit C, that the Developer is obligated to design, construct, and install at Developer’s sole cost in connection with the development of the Property.
- g. The term “Plans and Specifications” shall refer to the engineering and design documents that have been prepared by Wernsman Engineering and Land Development on February 4, 2022 and reviewed and approved by the City Engineer in connection with the Development on _____. The Site Plan is referenced in Exhibit B.

4. Effect of Agreement.

- a. Effective date. The effective date of this Agreement shall be the date the agreement is entered into by the City of Evans and reflected on page 1.
- b. This Agreement and the other provisions incorporated as part of the Site Plan are intended to prescribe a general plan for the use and development of the Property. However, except as expressly provided herein and in the Site Plan, they do not supplant the City’s land use regulations and other ordinances and regulations as they relate to the Property and shall not be construed to limit the authority of the City to adopt different ordinances, resolutions, regulations, rules, policies or codes so long as they apply throughout the City uniformly or to classes of individuals or properties uniformly.
- c. The provisions of this Agreement, the Improvements identified in Exhibit C, the Site Plan, and the Plans and Specifications reflect the requirements of the City’s utilities as of the effective date of the Agreement. These provisions shall not be construed as limitation upon the authority of the City to adopt different ordinances,

rules, regulations, resolutions, policies or codes which change charges or costs for any service or class of service or any other charges so long as they apply throughout the City uniformly or to the class of service uniformly or to all users of a particular utility system, such as a particular water system or sewer system, uniformly.

- d. Except as otherwise expressly provided in this Agreement or the Site Plan, the establishment of vested property rights under this Agreement shall not preclude the application on a uniform and non-discriminatory basis of City regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical and mechanical codes) as all of such regulations exist on the date of this Agreement or as they may be enacted or amended after the date of this Agreement. The Developer does not waive its right to oppose the enactment or amendment of any such ordinance, resolution or regulation on the same basis that any other member of the public could present such opposition.

5. Term of Agreement.

The term of this Agreement shall be three (3) years from the effective date. After the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, such termination shall not affect (a) any vested rights obtained prior to such termination and contemplated to continue after such termination; or (b) any right arising from City permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and that were contemplated to continue after termination of this Agreement.

6. Vested Rights.

- a. Sections 24-68-101, et seq., C.R.S. (Vol. 7, 2002), “the Vested Rights Statute,” provides 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 Rights Statute has been implemented by the City through the procedures set forth in Sections 18.01.100 et seq., of the City Code.
- b. Pursuant to the provisions of the Vested Rights Statute and Sections 18.01.100 et seq., of the City Code, the parties find that the Site Plan is a site specific development plan for the purposes of developing the Property, vesting in the Developer the right to develop the Property in the manner depicted in the Final Plat.
- c. The vested rights associated with the Development, as set forth in this Section 6, expressly and by reference, shall run with the land and shall remain in effect throughout the term of this Agreement. No other vested rights are created or intended to be created by this Agreement, the Site Plan, or any of the other documents relating to the Property. Upon expiration or termination of this Agreement all vested rights shall expire, except as otherwise specifically provided by Section 5 above.

- d. Any provisions of this Agreement or the Site Plan to the contrary notwithstanding, the City reserves the right to declare a moratorium upon a reasonable finding by the City Council that such moratorium is necessary to protect the public health, safety or welfare, but a moratorium cannot be declared with respect to the Development for planning purposes.
- e. The City finds the three (3) year duration of such vested property rights to be warranted in light of all relevant circumstances, including, but not limited to, the substantial size of the Property, the scale and phasing of the Development, economic cycles, and market conditions.

7. Improvements.

The public improvements associated with the development of the Property are described in Exhibit C (Developer Improvements). Exhibit C includes but is not limited to (1) description of Improvements, (2) Engineer's estimate of probable costs of Improvements, and (3) Schedule of completion of Improvements. From time to time and upon the City's request, Developer agrees to keep the City informed of the progress of its work and provide a projection of when Improvements will be installed as well as the approximate cost of the remaining Improvements.

8. Developer's Obligations to Construct Improvements.

Developer shall design, construct and install at its own expense, the Improvements on or before the Estimated Completion Date set forth in Exhibit C, subject to extension as provided for delays due to Force Majeure. Construction of the Improvements shall be in substantial and material conformance with the Plans and Specifications, as reviewed and approved by the City Engineer or a designated representative, and shall be in compliance with all policies, ordinances, standards and specifications adopted by the City relating thereto in effect at the time of such construction. The City's review and approval of the Plans and Specifications shall not impose any liability on the City and shall not limit or affect Developer's responsibility or liability for design, construction and installation of the Improvements. Developer agrees to save and hold the City harmless from any claims, fault or negligence attributable to such design, construction and installation.

- a. Acquisition of rights-of-way and easements. Before commencing the construction of any Improvements the Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances except permitted encumbrances to which the City has consented in advance and in writing, on all lands and facilities, if any, traversed by the proposed improvements.
- b. Operation Standards during construction.
 - 1) Hours of operation of construction equipment. With regard to the construction and installation of the Improvements described in this Agreement, the operation of construction equipment outside an enclosed structure (i.e. grading, other surface improvements, underground utilities, either public or private) shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. In situations of need, and upon written request, the hours of operation may be altered by the City Engineer or their designated representative.

- 2) Debris in public rights-of-way. With regard to the construction and installation of the Improvements described in this Agreement, the Developer shall, at all times, keep the public right-of-way free from accumulation of dirt, mud, waste material or rubbish caused by its operation. Developer shall remove such rubbish no less than weekly and, at the completion of its work, shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way caused by its operation.
- 3) Erosion control requirements. Developer shall install temporary and permanent erosion control in the Development to control erosion by both wind and water. Developer shall maintain said erosion controls on a routine basis. By way of explanation and without limitation, said control may consist of seeding of approved grasses, temporary dikes, gabions and/or other devices. In the event that the Developer fails to perform erosion control maintenance, Developer shall have 20 days upon receiving written notice to bring the Development into compliance.
- 4) Other nuisance mitigation. To the extent reasonably possible, Developer shall mitigate any nuisance caused by construction activities in connection with the installation and construction of the Improvements, including but not limited to noxious odors, excessive dust, particularly on days with high winds, and artificial light intrusion.
- 5) Standards for subcontractors. Developer hereby agrees that it shall require its subcontractors to comply with the Operations Standards as set forth in this Section, including but not limited to cooperating with the City's construction inspectors, and ceasing operations when winds are of sufficient velocity to create blowing dust which, in the City's construction inspector's opinion, is hazardous to the public health and welfare and ceasing such operations will not pose an immediate risk to health, safety, and welfare.
- 6) Remedies for failure to comply with Operation Standards. Failure to comply with the Operation Standards set forth in this Section shall be sufficient cause for the City to withhold building permits and/or certificates of occupancy or other approvals or permits until corrected to the satisfaction of the City Engineer or designee.

9. Development Standards.

Developer shall comply with all applicable standards related to the following items, and as reflected in the Plans and Specifications and Exhibit C-1 Description of Improvements.

10. Security for Construction of Improvements.

The Developer's construction and completion of the Improvements shall be assured by Developer providing a Performance Guarantee in the amount of 115% of the estimated cost of the Improvements prior to the earlier of (1) issuance of the first permit associated with the

Development or (2) commencement of work on the Property. The Performance Guarantee shall consist of a Letter of Credit or bond in a form deemed acceptable by the City Attorney. The Developer shall have no direct or indirect ownership or managerial control over the entity issuing any Performance Guarantee.

In the event that prior to the City's initial acceptance of the Improvements, the Performance Guarantee should expire or the entity issuing the Performance Guarantee becomes non-qualifying or the cost of the Improvements is reasonably determined by the City to be greater than the amount of the security provided, then the City shall furnish the Developer with written notice of such condition, and within fifteen (15) days of receipt of such notice the Developer shall provide the City with a substituted qualifying Performance Guarantee or augment the deficient security to achieve 115% of the cost of the Improvements.

If such Performance Guarantee is not timely furnished, then development activities, including but not limited to the issuance of building permits and certificates of occupancy, may be suspended by the City pending compliance with the provisions of this Section.

11. Testing and Inspection.

Developer shall employ (at its own expense) a qualified independent testing company to be approved by the City Engineer, or their designated representative, in its reasonable discretion, to perform all testing of materials or construction that may be reasonably required by the City. Developer shall furnish certified copies of test results to the City Engineer and, upon request by the City Engineer, release and authorize full access to the City Engineer of all work-up materials, procedures and documents used in preparing the test results.

At all times during construction of the Improvements and until final acceptance by the City, the City shall have the right, but not the duty, to inspect materials and workmanship utilized for the Improvements at Developer's cost, provided the City's inspector is accompanied by Developer or its designated representative. All materials and work must conform to the approved Plans and Specifications and all applicable regulations. Any material or work not conforming to the Plans and Specifications or other applicable regulations shall be promptly removed, repaired or replaced, at Developer's expense and to the reasonable satisfaction of the City Engineer.

12. Initial Acceptance of Improvements.

Developer shall make written application to the City Engineer or their designated representative, for initial acceptance of the Improvements ("Initial Acceptance") within 30 days of their completion. Such Improvements will be described on a "Developer's Contribution Worksheet" provided by the City Engineer. The Developer shall be responsible for the accuracy and completeness of all information provided. The affidavit, lien waivers and other materials may be reviewed by the City, but the City assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided. Developer's application for initial acceptance shall be accompanied by the following information and materials:

- a. As Built Drawings: One (1) set of surveyed Mylar and one digital/CAD file of the "as built" drawings, certified as to accuracy by the Developer or its architect or Engineer;

- b. Engineer's Certification: Written certification by the Developer's Engineer that the Improvements for such Phase of development have been fully constructed and installed in substantial conformance with the Plans and Specifications;
- c. Cost Affidavit: A final affidavit of the Improvements' construction cost including verification reasonably satisfactory to the City Engineer;
- d. Improvements Affidavit: Developer shall provide a signed affidavit that the Improvements have been paid for in full;
- e. Lien Waivers: Developer shall provide lien waivers from its general contractor and from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the Improvements.

After the receipt of Developer's written application for initial acceptance, the City Engineer, or their designated representative, will use reasonable efforts to promptly inspect the Improvements and prepare a detailed written description of all Improvements that are not in compliance with the requirements of the City or the Plans and Specifications and deliver that description to the Developer. After curing such defects as are noted on the written statement provided by the City Engineer to the Developer, the Developer shall make written application to the City for re-inspection of the Improvements, and the City Engineer will use reasonable efforts to promptly re-inspect such Improvements. No Improvements shall be deemed to be initially accepted by the City until the City Engineer has certified, in writing, that the Improvements appear to have been completed in accordance with the applicable Plans and Specifications. This shall then constitute Initial Acceptance.

13. Warranty Period for Improvements Following Initial Acceptance.

Developer shall remain fully responsible for construction defects of all Public Improvements for a period of two (2) years after their Initial Acceptance by the City. If any of the Improvements fail, portions shall be replaced with similar Improvements deemed satisfactory by the City Engineer, or their designated representative, in the exercise of his reasonable discretion before final acceptance by the City. All roads and public spaces must be kept free of debris during construction and shall be properly cleaned following any required repair or replacement of Improvements.

14. Maintenance Guarantee During Warranty Period.

Developer's application for Initial Acceptance shall be accompanied by a Maintenance Guarantee in a form deemed acceptable to the City in the amount of fifteen percent (15%) of the total costs of the Improvements. The Maintenance Guarantee shall be subject to the same conditions as those set forth for the Performance Guarantee. The form and content of the Maintenance Guarantee shall be approved by the City prior to implementation, and shall include language that allows the City to extend the duration of coverage if necessary.

Until Final Acceptance of the Improvements by a Certificate of Completion reviewed and approved by the City Engineer or their designated representative, Developer agrees that (a) the Maintenance Guarantee shall not be released; and (b) the Developer shall bear all risks and liability related to any loss, damage, or claims due to defects or failures of any of the Improvements; and (c) the Developer shall perform all maintenance and make all repairs and replacements of all

defects or failure of Improvements at Developer's expense which, in the reasonable opinion of the City Engineer, may be necessary.

If, within fifteen (15) days after the Developer's receipt of written notice from a City Official requesting such reasonably required maintenance, repairs, and/or replacements of the Improvements, the Developer shall not have undertaken with due diligence to make same, the City, after providing written notice to Developer, may make such maintenance, repairs, and/or replacements at the Developer's expense. The City shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter, or the City may charge the Developer for the costs thereof if such charges are not paid by the Maintenance Guarantee. In case of emergency, such written notice shall be waived and the City may proceed as it reasonably deems necessary, at the expense of the Developer or the issuers of the Maintenance Guarantee.

15. Final Acceptance of Improvements.

The Developer shall make a written request to the City Engineer, or their designated representative, for a final inspection of the Improvements no sooner than two (2) years after the City's Initial Acceptance of all of the Improvements for such Phase of Development. Upon receipt of such request the City may, but shall not be obligated to, conduct a final inspection of the Improvements. If the Developer fails to have the Improvements finally accepted as provided in this Section within two (2) years and six (6) months after the City's Initial Acceptance, the City shall have the right, but not the obligation, at any time thereafter to conduct a Final Inspection of the Improvements.

If, pursuant to a final inspection requested by the Developer or initiated by the City, any Improvement is found to not conform to this Agreement, the Plans and Specifications, or other applicable regulation or requirement, then the City shall have the rights set forth in Section 14 of this Agreement (Maintenance Guarantee During Warranty Period) to remedy such defects. Nothing herein shall be construed or deemed as requiring the City to finally accept and release from the Maintenance Guarantee any Improvement that is defective or damaged.

After receipt of satisfactory evidence that the Improvements fully conform to this Agreement, the Plans and Specifications, and all applicable regulations and requirements, and that all of the maintenance, repairs, and replacements requested by City Officials pursuant to the terms of this Agreement have been completed to the reasonable satisfaction of the City, the City Engineer shall issue a Certificate of Completion, evidencing completion and Final Acceptance of such Improvements. The Maintenance Guarantee provided by the Developer shall be released after the Final Acceptance of all of the Improvements has been granted and the Certificate of Completion has been issued by the City.

16. Conveyance of rights-of-way, easements and improvements to City.

All public Improvements shall be conveyed to the City at the time of initial acceptance. The documents of conveyance shall be in a form acceptable to the City and shall be furnished to the City Engineer or their designee, for recording. Developer shall reimburse the City for all costs of recording. At the City's request, the Developer shall provide, at its expense, a policy of title insurance insuring title in the City, free and clear of all liens and encumbrances, for all land, property, and easements dedicated or conveyed (except those easements that do not affect the City's use of the property) to the City or for public use.

17. Commitments to Serve from Service Providers.

Prior to commencement of construction, Developer shall provide will serve letters or other evidence deemed acceptable by the City's Director of Public Works, indicating the willingness and ability of service providers to supply their respective services to the Development in an amount reasonably needed for the Development, including but not limited to water, waste water, electrical, and natural gas service.

18. Developer Dedications and Impact fees.

Developer shall comply with the City Code regarding dedication of impact fees, including but not limited to Section 3.20 of the Evans Municipal Code.

19. Additional Developer Obligations.

In addition to its obligations related to the Improvements, Developer further agrees to fulfill its obligations with regard to the items and matters set forth in Exhibit E, attached.

20. Additional Developer Liabilities.

a. Indemnification. To the extent permitted by law, Developer hereby agrees to indemnify and hold the City, City Officials, its employees, agents, representatives, and insurers (collectively, "City Parties") harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees, and expenses (including reasonable attorney's fees) resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of the Developer, its employees, agents, consultants, representatives, or subcontractors except to the extent caused by negligence, gross negligence or willful misconduct of the City or one or more City Parties. Developer shall promptly investigate, handle, respond to and provide defense for and defend against any such liability, claims, or demands at the sole expense of Developer. Developer also agrees to bear all reasonable costs, expenses, and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent unless they are caused by negligence, gross negligence or willful misconduct of the City or one or more of its officers, agents or employees.

b. Insurance. Developer shall (for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction, or installation of Improvements) maintain such liability insurance including general liability, contractors liability, professional liability, comprehensive automobile liability, worker's compensation insurance and sufficient public liability insurance as will protect the City, City Officials, City's employees, agents and representatives against any and all potential liability, claims, damage, demands, losses and expenses, that may be incurred or asserted. Liability insurance shall be in the minimum amount of three hundred thirty thousand dollars (\$330,000.00) for injury to one person, or nine hundred ninety-thousand dollars (\$990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Colorado Governmental Immunity Act, as it may be amended. Whenever reasonably requested by City or City Officials, the Developer agrees to submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and which show the City, City Officials, its employees, agents, and representatives as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Development Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

c. **Drainage Liability.** To the extent permitted by law, Developer shall indemnify and hold the City harmless from any liability the City may have on account of any change in the nature, direction, quantity or quality of drainage flow, resulting from the Development. In addition, Developer shall reimburse the City for any and all costs, fees, and expenses, including reasonable attorney's fees, that the City incurs in acquiring any rights of way or easements that the City deems necessary or is required to acquire or condemn or that the City is held to have acquired or condemned for drainage or as a result of or relating in any manner to the Development.

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

f. **Use Tax.** Any and all use tax due on construction and building materials for public facilities shall be paid as provided under Municipal Code including but not limited to Section 3.04.200.

g. **Cost Reimbursement to City.** Developer shall reimburse City for all reasonable costs incurred for professional consultants including but not limited to engineers, testing companies, contractors, and attorneys reasonably used by the City in connection with the preparation or implementation of this Agreement and in the review and processing of the Application, as well as the design, construction, review, testing, completion, repair, replacement, and approval of the Development.

21. Breach and Remedies

a. **Breach of Agreement by Developer.** If at any time this Agreement (or any part hereof) has been materially breached by Developer or if satisfactory progress substantially in accordance with Exhibit C-1, Description of Improvements, has not been made on the design, construction, installation, repair, replacement or maintenance of the Improvements the City may, after 30 days' prior written notice to Developer or such additional period as may reasonably be agreed to by the City in writing in light of the nature of the alleged breach, draw on the Performance Guarantee or Maintenance Guarantee and the City may withhold approval of any or all building permits, certificates of occupancy, water meters, or tap hook-ups for any area within the Development, or other approvals or permits, if Developer then fails to make reasonable progress as reasonably determined by the City, unless such failure is caused by circumstances which are outside the Developer's reasonable control, meaning that such circumstance is a result of an act of god (including fire, flood, earthquake, or other natural disaster) regionally recognized shortage of materials, strike, lockout or interruption of utility service or Force Majeure. Notwithstanding these rights and remedies, the City may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity, or pursuant to this Agreement. The City's remedies shall be cumulative.

b. **Breach of Agreement by City.** If at any time the Developer believes the City is in breach of this Agreement, the Developer shall provide the City with 20 days' prior written notice. In the event the City fails to remedy the alleged breach within 20 days or such additional period as may be necessary in light of the nature of the alleged breach, then the Developer remedies are limited to specific performance of this Agreement and shall not include any claim for damages or other monetary relief.

22. Miscellaneous.

a. No Waiver. Delays by the City in enforcement or the waiver of any one or more breaches of this Development Agreement shall not constitute a waiver of any of the remaining terms or obligations or any future breaches.

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

c. Recording of Agreement and Encumbrance on the Property. This Agreement shall be recorded with the Weld County Clerk and Recorder at Developer's expense and shall be a covenant running with and against all the Property, property rights, and improvements contained within the Development in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the Property on notice as to the terms and obligations herein.

d. Binding Effect. Unless otherwise provided herein, this Development Agreement shall be binding upon Developer's heirs, successors, assigns, transferees, and any other person or entity acquiring or purchasing any interest in any part of the Property.

e. Transfer or assignment. In the event of a sale or transfer of any portion of the Property, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Development Agreement unless, prior to the transfer or the sale, a written Agreement delineating and allocating the various rights and obligations for the Improvements, has been approved and executed by the City Council. Notwithstanding anything herein to the contrary, Developer shall have the right to transfer and/or assign its rights and interests in this Agreement to any entity that controls, is controlled by, or is under common control with Developer without the approval of the City or City Council, provided the City is given written notice within 10 days of such transfer.

f. Title and Authority. Developer expressly warrants and represents to the City that it is the record owner of the Property and further represents and warrants that the undersigned has full power and authority to enter into this Development Agreement. Developer understands that the City is relying on the representations and warranties contained herein, in its consideration of the application and in entering into this Agreement.

g. Notices. Any notice to Developer or the City, which may be given under the terms of this Agreement, shall be in writing and shall be deemed sufficiently given on the third (3rd) business day following the date such notice is sent by certified or registered U.S. Mail, postage prepaid, return receipt requested, or as of the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows:

[Intentionally left blank, see following page]

TO CITY:
Attention: City Manager
1100 37th Street
Evans, CO 80620-2036

TO DEVELOPER:
Hunters Reserve Plaza I, LLC
Hunters Reserve Plaza II, LLC
6068 Stone Chase Court
Windsor, CO 80550

With a copy to
Scotty P. Krob
Krob Law Office LLC
8400 E. Prentice Ave, Penthouse
Greenwood Village, CO 80111

With a copy to:
Regan J. Duffy
Duffy and Robertson, P.C.
39400 Woodward Avenue, Suite 185
Bloomfield Hills, Michigan 48304

Any party may change its notice address by providing the other party(ies) notice as set forth in this section.

h. Force Majeure. Whenever a period of time is herein prescribed for an action to be taken or performed by any Party, that Party will not be liable to so perform within such time period due to, and there will be excluded from the computation of such period of time, any delays due to, strikes, riots, acts of God, shortages of labor and materials, war, governmental laws, regulations or restriction or any other cause of any kind whatsoever which are beyond the reasonable control of the Party required to take or perform such action.

i. Cooperative drafting. This Agreement is the product of a cooperative drafting effort by the Town and the Developer and shall not be construed or interpreted against either party solely on the basis that one party or its attorney drafted this Agreement or any portion of it.

j. Amendment. This Agreement cannot be modified or revoked except by an instrument approved by the City Council and signed by the Mayor and the Developer or the then owner of the Property or any portion thereof if there has been an assignment as it relates to the specific Property.

k. No third party beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any legal person other than the Parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Nothing in this Agreement is intended to interfere with the agreements of the Parties with third parties.

IN WITNESS THEREOF and agreeing to be fully bound by the terms of this Agreement the parties have set their hands below on the dates indicated.

CITY OF EVANS

DEVELOPER

By: _____
Brian Rudy, Mayor

By: _____
Brandon Belfiore, Manager
Hunters Reserve Plaza I, LLC
Hunters Reserve Plaza II, LLC

ATTEST:

Julie Kamka, City Clerk

NAME

By: Brandon Belfiore

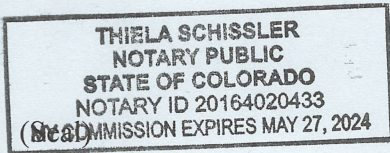
STATE OF COLORADO)

COUNTY OF WELD)

Acknowledged before me this 2 day of March, 2021 by Brandon Belfiore, as manager
of Hunters Reserve Plaza I LLC
Hunters Reserve Plaza II LLC

Witness my hand and official seal.

My commission expires: 5-27-2024



Thiel Schissler
Notary Public

Exhibits

A – Legal Description

B – Site Plan

C – Developer Improvements

 C-1 – Description of Improvements

 C-2 – Engineer’s estimate of probable costs of Improvements

 C-3 – Schedule of completion of Improvements

D – Performance Guarantee

E – EQR Water Dedication Analysis

EXHIBIT A: LEGAL DESCRIPTION

LOT 2B OF HUNTER'S RESERVE CENTER FILING NO. 2, SITUATED IN THE NW 1/4, SECTION 25, T. 4 N., R. 66 W. OF THE 6TH P.M., CITY OF EVANS, WELD COUNTY COLORADO

LOT 3 OF HUNTER'S RESERVE CENTER, SITUATED IN THE NW 1/4, SECTION 25, T. 4 N., R. 66 W. OF THE 6TH P.M., CITY OF EVANS, WELD COUNTY COLORADO

EXHIBIT B: SITE PLAN

Site plan has been recorded with the Weld County Clerk and Recorder at Reception _____
and is also on file with the City of Evans.

EXHIBIT C: DEVELOPER IMPROVEMENTS

C-1 – Description of Improvements to be made pursuant to the Development Agreement

C-2 – Engineer’s estimate of probable costs of Improvements

C-3 – Schedule of completion of Improvements

Exhibit C-1 Description of Improvements

DESCRIPTION OF IMPROVEMENTS TO BE MADE PURSUANT TO THE DEVELOPMENT AGREEMENT: Development Agreement between City of Evans, CO and Hunters Reserve Plaza I, LLC/Hunters Reserve Plaza II, LLC

- a. Right-of-way Improvements and Dedications: Developer has dedicated appropriate right-of-way for all public streets in and adjacent to this development in accordance with the most current City standards for the same and agrees to pay for the site improvements shown on the approved Final Construction Plans including, landscaping, irrigation, and bikeway/walkways along with the following:
 1. Sidewalks and ADA-compliant infrastructure:
 2. Landscape improvements and maintenance: The Developer, the owners of the Property, their successors in interest and/or assigns, are responsible for implementation and maintenance of the landscaping, irrigation, fences and walls on the site as well as the Right of Way Landscape. The parties specifically understand and agree that the City is not responsible for any maintenance or upkeep of the same.
- b. Access and Egress Requirements: There shall be a minimum of two all-weather ingress and egress access points into the Development at all times for emergency vehicle access or as may otherwise be approved by the City. Points of ingress/egress shall be maintained and remain free and clear at all times.
- c. As-Built Drawings: All as-built construction drawings of the Improvements shall be submitted in mylar, print, and digital form conforming to the City's format and content requirements.
- d. Sewer Lines: Developer will construct sewer lines serving the Property according to the approved Final Construction Plans.
- e. Water Lines: Developer will construct water lines serving the Property according to the approved Final Construction Plans.
- f. Stormwater infrastructure: Developer will construct stormwater infrastructure on the site and offsite as shown on the approved Final Construction Plans.
- g. EQR Water Analysis of need and purchase
- h. On-site landscaping and irrigation

Exhibit C-2 Engineer's estimate of probable costs of Improvements

Project Name: Hunters Reserve Plaza

Description	Total Cost
Phase I Improvements	
1. ROW Access Improvements	\$22,171.50
2. Stormwater Control Structures	\$14,253.00
3. Water System	\$48,632.00
4. Sanitary Sewer	\$31,604.00
5. Landscaping/Irrigation	\$78,340.00
Phase I Subtotal	\$195,000.50
Phase II Improvements	
5. Landscaping/Irrigation	\$58,540.00
Phase II Subtotal	\$58,540.00
Total Estimated Cost of Improvements	\$253,476.00

Exhibit C-3 Schedule of Improvements








Schedule of Completion	2022				2023				2024				2025			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
PHASE I			Phase I Start													
					ROW Access Completion											
					Water System Completion											
					Sanitary Sewer Completion											
					Landscape/Irrigation Completion											
PHASE II					Phase II Start											
									Landscape/Irrigation Completion							

EXHIBIT D: PERFORMANCE GUARANTEE

The form of performance guarantee may change from the intended Letter of Credit at the time this packet is being prepared to Cash to be held in Escrow at the time of the Council meeting. Evidence of either surety will be inserted after this Exhibit D Cover Sheet prior to recording.

EXHIBIT E: EQR WATER DEDICATION ANALYSIS

Hunters Reserve Plaza I, LLC

6068 Stone Chase Court
Windsor, CO 80550

February 4, 2022

City of Evans Public Works Department
Attn: Randy L. Ready, Assistant City Manager
1100 37th Street
Evans, CO 80620

Re: Water Dedication
Project Name: Hunter's Reserve Plaza, Phase 1 (Lot 3)

Dear Mr. Ready,

As referenced in the Water Dedication Analysis dated October 8th, 2021, for Hunters Reserve Plaza Lots 2B and 3, Building A (Phase 1) located on Lot 3 requires a dedication of 3.0 EQRs.

Hunters Reserve Plaza I, LLC is formally requesting to purchase the 3.0 EQRs utilizing the City of Evans "cash-in-lieu" program. We have attached the "Water Dedication Analysis" for reference.

Below is purchaser contact information:

Hunters Reserve Plaza I, LLC
6068 Stone Chase Court
Windsor, CO 80550

Sincerely,



Brandon Belfiore, Manager
Hunters Reserve Plaza I, LLC
(970) 590-7436
brandon@belfiorehomes.com

Enclosures: Water Dedication Analysis dated October 8, 2021

1100 37th Street • Evans, CO 80620 • (970) 475-1113

October 8, 2021

Hunters Reserve Plaza, Lots 2B, 3
Water Dedication Analysis

The applicant is proposing commercial uses for Building A (phase 1) and Building B (phase 2). Building A, Phase 1 projects the following occupants and square footage.

- Liquor Store 4,200 sf
- Hiroshi Teriyaki Grill 1,190 sf
- Tenant TBD 1,200 sf
- Tenant TBD 1,658 sf
- Total SF 8,248 sf

The applicant provided two examples of current commercial properties which are similar to the proposed property. The information included the usage and square footage of each tenant, total annual usage for indoor and outdoor uses and in one case the estimated outdoor usage.

After consideration, these examples did not provide reasonable projected usages for the projected tenants of Building A.

To project the water usage for the proposed building, we considered industry standards for Usage per Day factors for specific uses and the applicants irrigation consultant projected outdoor usage.

Industry Standards

- Liquor Store, 100 gals/day (usages at liquor stores generally include ice makers, limited bathroom facilities and other minor uses)
- Small Restaurants, 500 gals/day (usages at small restaurants generally include bathroom facilities, meal preparation stations, dishwashers, janitorial wash areas, and ice makers)
- Undetermined Tenants, 118 gals/day assuming uses would not be a restaurant and would be some small retail spaces with limited bathroom facilities.

Assumed Days per Year Businesses Would be Open

- Liquor Store – Assumed closed 5 days per year, total 360 days open
- Hiroshi Grill – Assumed closed 1 day per week, total 313 days
- Tenants TBD – Assumed closed 1 day per week, total 313 days

Consultants Provided Annual Outdoor Consumption

The irrigation consultant projected an annual usage for Building A to be 117,500 gallons from the design of the system.

1100 37th Street • Evans, CO 80620 • (970) 475-1113

The following spreadsheet takes the above described information and assumptions to determine the required EQR dedication. As a result, Building A will require a dedication of 3.0 EQRs.

Projected Annual Indoor/Outdoor Usage for Proposed Building A									
Based on Set Usage per Day and Days Open per Tenant									
Projected Tenant Use	Sq. Ft.	Resulting Percentage of Total Sq. Ft.	Projected Gallons per Day	Projected Open Days per Year	Projected Indoor Annual Usage based on Projected Gals per day and assumed open days per year	Projected by Irrigation Consultant Outdoor Usage (gals)	Total Projected Annual Indoor & Outdoor Usage (Gals)	Gallons/EQR	Total EQRs Required
Liquor Store	4,200	50.9	100	360	36,000				
Hiroshi Teriyaki Gr	1,190	14.4	500	313	156,500				
Vacant (TBD)	1,200	14.5	118	313	36,934				
Vacant (TBD)	1,658	20.1	118	313	36,934				
TOTALS	8,248	100.0			266,368	177,500	443,868	148,262	3.0