

**CREEKSIDE TOWNHOMES
SITE PLAN AGREEMENT**

THIS SITE PLAN AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20____, by and between the **Town of Erie, a Colorado municipal corporation**, in the Counties of Weld and Boulder, State of Colorado, hereinafter referred to as "Erie", and **Meritage Homes of Colorado, Inc., an Arizona corporation**, 6892 South Yosemite Court, Suite 1-201, Centennial, Colorado, 80112, hereinafter referred to as "Owner;"

WHEREAS, the Owner has submitted Site Plans for the **Creekside Townhomes Site Improvement Plan - 2nd Amendment, 3rd Amendment, 4th Amendment, and 5th Amendment** ("Development") attached hereto as "Exhibit A" and incorporated herein by reference. Said Site Plan has been approved by Erie; and

WHEREAS, the Town has reviewed its Water Supply Plan, which addresses the Town's existing water obligations and its present and future water supplies. The Town has also reviewed its Conservation Plan and its Municipal Code regarding water dedications, and has determined, at its sole discretion, that it will be able to provide an adequate water supply to serve the Development water needs at full build out pursuant to Section 29-20-301 C.R.S. et seq. As a term and condition of providing said water, the Developer hereby agrees to comply with the Town's Municipal Code regarding water dedications and cash in lieu of water dedications.

WHEREAS, the Erie Municipal Code ("Code") requires that the Owner enter into this Site Plan Agreement with Erie relative to improvements related to the Development; and

WHEREAS, this Agreement has been modified by the parties as indicated by the addition of certain special provisions, if any, in Section VII.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

I. TOWN ADMINISTRATIVE OFFICIAL

For the purposes of this Agreement, "Town Administrative Official" shall be defined as the Town Administrator or his or her designee.

II. DEVELOPMENT OBLIGATION AND COORDINATION

Owner shall be responsible for performance of the covenants set forth herein. Unless specifically provided in this Agreement to the contrary, all submittals to Erie and acceptances required of Erie in connection with this Agreement shall be submitted to, or rendered by, the Town Administrative Official, who shall have general responsibility for coordinating development with Owner.

III. PUBLIC AND COMMON FACILITIES IMPROVEMENTS

Owner agrees to design, construct and install according to Erie accepted plans, all public

improvements and common facilities specifically regulated as necessary for the Development including, but not limited to, street, alley, curb, gutter, sidewalks, landscaping, irrigation, fencing, street lights, water, waste water, storm sewer and drainage improvements, trails and park improvements on and off the Property as required for the Development (hereinafter, "Public Improvements" and "Common Facilities") and as described in "Exhibit B" attached hereto and made part hereof. Owner agrees to dedicate said improvements to Erie, or others for the Common Facilities, and give a two (2) year guarantee for all improvements constructed.

Construction and installment of all Public Improvements and Common Facilities as described on "Exhibit B" shall be completed prior to three (3) years from the date of this Agreement as such date is set forth in the opening paragraph of page 1.

A. Construction Standards

Owner shall construct all improvements required by this Agreement, and any other improvements constructed in relation to the Development, in accordance with plans and specifications accepted in writing by Erie, and in full conformity with Erie's "Standards and Specifications for Design and Construction of Public Improvements," ordinances and regulations.

B. Engineering and Consulting Services

Owner agrees to furnish, at its expense, all necessary engineering and consulting services relating to the design and construction of the Development, including but not limited to, street, alleys, curb, gutter, sidewalks, landscaping, irrigation, fencing, street lights, signage, water, waste water, storm sewer and drainage improvements, trails and park improvements. Said engineering and consulting services shall conform to the standards and criteria for public improvements as established and accepted by Erie. These services shall be performed by or under the supervision of a Registered Professional Engineer and/or Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law. The design services shall include inspection services deemed necessary by Erie.

C. Plan Submission and Acceptance

Owner shall furnish to the Town Administrative Official the required fees and complete plans for all improvements and development phases. Erie shall issue its written acceptance or rejection of said plans as expeditiously as reasonably possible. Said acceptance or rejection shall be based upon the standards and criteria for Public Improvements as established by Erie, and Erie shall notify Owner of all deficiencies which must be corrected prior to acceptance. All deficiencies shall be corrected and said plans shall be resubmitted to and accepted by Erie prior to construction. All acceptances required hereunder from Erie shall be made by the Town Administrative Official.

D. Public Improvement Permits ("PIP")

Before the construction or installation of any improvements, Owner shall obtain a PIP from Erie as provided in the Code. The PIP application, fees, plans, specifications and any other data filed by Owner will be reviewed by Erie. If found to be complete and in accordance with

the Erie standards and specifications and other pertinent requirements, Erie will issue Owner the PIP. Owner shall reimburse Erie for any additional expenses incurred by Erie for the review of plans or inspection of construction work by consultants engaged by Erie for that purpose. The Owner shall also apply and pay for a PIP for all Common Facilities.

E. Testing and Inspection

Testing and inspection of the construction and materials shall be in accordance with the Town of Erie "Standards and Specifications for Design and Construction of Public Improvements." In addition, Owner shall employ, at its own expense, a licensed and registered testing company, to perform all testing of materials or construction that may be reasonably required by Erie. Owner shall furnish copies of test results to the Town Administrative Official on a timely basis for review and acceptance prior to commencement or continuation of that particular phase of construction. At all times during said construction, Erie shall have access to inspect the materials and workmanship of said construction and all materials and work not conforming to the accepted plans and specifications shall be repaired or removed and replaced at Owner's expense so as to conform to the accepted plans and specifications.

All work shown on the accepted public improvement plans requires inspection by the Public Works Department, Engineering Division. Except Town of Erie holidays, inspection services are provided Monday through Friday, from 7:00 a.m. to 4:00 p.m. During the hours listed above, inspections shall be scheduled a minimum of 24 hours in advance with the Engineering Division. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance in writing to the Director of Public Works for acceptance. Owner shall reimburse Erie for all direct costs of the after hours inspection services. If the request is denied, the work shall not proceed before or after the hours listed above.

Common Facilities shall have inspections performed by a professional consulting service acceptable to Erie. At all times Erie shall have access to inspect the materials and workmanship of the Common Facilities if deemed necessary by Erie. Inspection services for landscaping will also include the selection and tagging of plant materials prior to delivery to the site. Landscape and irrigation inspection services shall conform to the standards and criteria for Public Improvements as established and accepted by Erie.

F. Rights-of-way, Easements and Permits

Prior to commencement of construction of Public Improvements that require additional rights-of-way to be acquired, Owner shall acquire at its own expense and convey to Erie, all necessary land, rights-of-way and easements required by Erie for the construction of the proposed improvements related to the Development. Owner is only obligated to acquire that portion of land, rights-of-way and easements necessary for the construction of Public Improvements, roads and utilities required by this Agreement.

All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by Special Warranty Deed or easement in a form and substance acceptable to Erie. All title

documents shall be recorded by Erie at Owner's expense. Owner shall also furnish, at its own expense, an ALTA title insurance policy for all interest(s) so conveyed, subject to acceptance by Erie.

Owner shall be responsible for obtaining the following to the extent applicable:

1. All permits as required by the United States Corps of Engineers.
2. Colorado Department of Health and Environment ("CDPHE") "General Permit for Stormwater Discharges Associated with Construction Activity", required during construction.
3. Town of Erie "Grading and Stormwater Quality Permit" per Erie "Standards and Specifications for Design and Construction of Public Improvements."
4. Air Quality Permit.

G. Street Improvements

Owner shall furnish and install, at its own expense, the street improvements in conformance with the drawings, plans and specifications accepted by Erie and in accordance with the PIP.

H. Sidewalk Improvements

Owner shall furnish and install, at its own expense, all sidewalk improvements in conformance with the drawings, plans and specifications accepted by Erie.

I. Street Signs, Traffic Signs, and Striping

Owner will furnish and install at Owners expense street name signs, striping, stop signs, speed limit and other signs on all streets, in accordance with the Manual of Uniform Traffic Control Devices, as from time to time amended, and other applicable legal requirements.

J. Street Lights

Owner shall furnish complete plans for street lighting to be reviewed and accepted by Erie. The total cost of street light installation shall be Owner's obligation. Owner shall cause, at its own expense, Xcel Energy to install all required street lighting pursuant to Xcel Energy plans and specifications as submitted to and accepted in writing by the Town Administrative Official. Said street lights shall be installed concurrently with the streets on which they are located. The type of street lights shall be accepted by Erie.

K. Water Improvements

Owner shall furnish and install all water mains, lines, and appurtenances in conformance with the drawings, plans and specifications accepted by Erie.

L. Wastewater Improvements

Owner shall furnish and install all sewer lines and appurtenances in conformance with the drawings, plans and specifications accepted by Erie.

M. Drainage Improvements

1. Drainage improvements for the Development shall be constructed by Owner in accordance with drawings, plans and specifications accepted by Erie. Unless otherwise approved by Erie, over lot grading shall not be initiated by Owner until Erie approves drainage improvement plans by the issuance of the PIP. Owner shall provide temporary erosion control during and after over lot grading until the site is stabilized.
2. Drainage improvements for the Development shall be constructed by the Owner in accordance with accepted construction plans.
3. Owner shall be responsible for obtaining a CDPHE “General Permit for Stormwater Discharges Associated with Construction Activity” required during construction. A copy of this permit shall be submitted to Erie.
4. Owner shall be responsible for obtaining a Town of Erie “Grading and Stormwater Quality Permit” per Erie “Standards and Specifications for Design and Construction of Public Improvements.”

N. Landscape Improvements

For Common Facilities and rights-of-way, Owner shall furnish Erie complete final landscape and irrigation plans for each phase and obtain acceptance by Erie prior to commencement of construction. Owner shall construct landscape improvements as required in the landscape plan before the constructed improvements are accepted by Erie. Landscape plans need not be provided for private landscaping.

O. Utility Coordination and Installation

Owner shall be responsible for coordination of and payment for installation of on-site and off-site electric, street lights, natural gas, telephone, cable television and other such utilities. All utilities shall be placed underground as required by the Code.

IV. IMPROVEMENT ACCEPTANCE

A. Construction Acceptance

No later than ten (10) days after improvements are substantially complete, Owner shall request of the Town Administrative Official an inspection by Erie. If Owner does not request this inspection within ten (10) days of completion of improvements, Erie may conduct the inspection without the approval of Owner. When requested by Erie, Owner shall provide Erie with complete “as-built” drawings in a form as defined in the Town of Erie “Standards and Specifications for Design and Construction of Public Improvements.” If Owner has not completed appropriate residential phase or commercial phase improvements as provided for in this Agreement, Erie may exercise its right to secure performance as provided in Section VIII.B of this Agreement. If improvements completed by Owner are satisfactory, the Town Administrative Official shall grant “construction acceptance”, which shall be subject to “final acceptance” as set forth herein. If improvements are not satisfactory, the Town

Administrative Official shall provide written notice to Owner of the repairs, replacements, construction or other work required to receive “construction acceptance”. Owner shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After Owner completes the repairs, replacements, construction or other work required, Owner shall request of the Town Administrative Official a re-inspection of such work to determine if construction acceptance can be granted, and Erie shall provide written notice to Owner of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Owner's expense. If Owner does not complete the repairs, replacements, or other work required within thirty (30) days of said notice, Erie may exercise its rights to secure performance as provided in Section VIII .B. of this Agreement. Erie reserves the right to schedule re-inspections. No “Certificate of Occupancy” will be issued by Erie prior to Construction Acceptance.

Additionally, for Common Facilities, the Owner shall include the Business Association, maintenance district, or final property owner in the final inspection procedures and provide Erie with written acceptance of the common facility for maintenance from this final owner.

B. Maintenance of Improvements

1. Warranty

Owner shall provide Erie with a minimum two (2) year warranty, from the date of construction acceptance, on all Public Improvements and shall provide the two (2) year warranty to the final owner for the Common Facilities.

2. Maintenance of Improvements

For a two (2) year period from the date of “construction acceptance” of any Public Improvements related to the Development, Owner shall, at its own expense, take all actions necessary to maintain said Public Improvements and make all needed repairs or replacements which, in the reasonable opinion of Erie, shall become necessary, except that Erie shall be responsible for snow removal on public streets. If within thirty (30) days after Owner's receipt of written notice from Erie requesting such repairs or replacements, Owner has not completed or undertaken to complete such repairs, Erie may exercise its rights to secure performance as provided in Section VIII .B of this Agreement.

C. Final Acceptance

At least thirty (30) days before two (2) years has elapsed from the issuance of “construction acceptance”, or as soon thereafter as weather permits, Owner shall request a “final acceptance” inspection in writing. The request shall be made to the Town Administrative Official. The Town Administrative Official shall inspect the Public Improvements and shall notify Owner in writing of all deficiencies and necessary repairs. After Owner has corrected all deficiencies and made all necessary repairs identified in said written notice, the Town Administrative Official shall issue to Owner a letter of “final acceptance”, as soon as reasonably possible thereafter. If Owner does not correct all deficiencies and make repairs identified in said inspection to Erie's satisfaction within thirty (30) days after receipt of said notice, weather permitting, Erie may exercise its rights to secure performance as is provided

in Section VIII.B of this Agreement. If any mechanic's liens have been filed with respect to the Public Improvements, Erie may retain all or a portion of the Improvement Guarantee up to the amount of such liens. If Owner fails to have Public Improvements finally accepted within two (2) years of the date of the issuance of construction acceptance or any Public Improvements are found not to conform to this Agreement, and applicable Town of Erie "Standards and Specifications for Design and Construction of Public Improvements," then the Owner shall be in default of the Agreement and Erie may exercise its rights under Section VIII.B of this Agreement.

D. Reimbursement to Erie

In the event it becomes necessary for Erie to complete the Public Improvements and/or Common Facility improvements due to the failure of Owner to complete said Public Improvements and/or Common Facility improvements, Erie may complete construction, repairs, replacements, or other work with funds other than the Improvement Guarantee, in which event Owner shall reimburse Erie within sixty (60) days after receipt of written demand and supporting documentation from the Town Administrative Official. If Owner fails to so reimburse Erie, then Owner shall be in default of this Agreement and Erie may exercise its rights under Section VIII .B of this Agreement.

V. IMPROVEMENT GUARANTEE

A. Public Improvement and Common Facilities Schedule

Owner has submitted the certified Public Improvement and Common Facilities Schedule shown as "Exhibit B" attached hereto and incorporated herein by reference. Said exhibit generally identifies those Public Improvements to be furnished, installed or constructed relative to the Development. Omission of any improvement from "Exhibit B" does not relieve Owner from responsibility for furnishing, installing or constructing such improvement. The Owner shall list all Common Facilities separately and subtotal separately on "Exhibit B."

B. Improvement Guarantee

Owner shall submit to Town Administrative Official an Improvement Guarantee for all Public Improvements associated with the Development. Said guarantee may be in cash or a letter of credit in form and substance. If the Improvement Guarantee as required herein is a letter of credit, the letter of credit shall be in the form as set forth on "Exhibit B-1," attached hereto.

1. Said guarantee, if a letter of credit, shall not expire during the winter season (November 1 - March 1). Said Improvement Guarantee shall include, but not be limited to, street, curb, gutter, sidewalks, landscaping, fencing, street lights, water, sewer, storm sewer and drainage improvements, trails and park improvements on or off the Development.
2. The total amount of the guarantee for the Development shall be calculated as a percentage of the total estimated cost including labor and materials of all Public

Improvements and Common Facilities to be constructed in the Development as described on "Exhibit B." The total minimum amounts are as follows:

- a) Prior to commencement of construction of Public Improvements and Common Facilities improvements: 115% of the amount(s) shown on "Exhibit B."
 - b) Upon "substantial completion construction acceptance" of the Public Improvements in each phase through "final acceptance": 25% of the amount(s) shown on "Exhibit B."
 - c) Upon "substantial completion construction acceptance" of Common Facilities: 0%.
 - d) After Final Acceptance of Public Improvements: 0%.
3. In addition to any other remedies it may have, Erie may, at any time prior to Final Acceptance, draw on any letter of credit or Improvement Guarantee received pursuant to this Agreement.

In the event that a.) the Owner fails to extend or replace the letter of credit at least sixty (60) days prior to expiration of such letter of credit, b.) the letter of credit is set to expire, c.) Erie receives notice that the letter of credit will not be renewed, d.) the entity issuing the letter of credit becomes non-qualifying, or e.) the letter of credit, in the sole determination of Erie, is at risk of being lost as a guarantee, then, in any of these events, the Owner shall be in default of this Agreement and Erie may immediately draw on the letter of credit for the full amount of the letter of credit. In such event as identified herein, no notice or prior notice shall be required prior to drawing on the letter of credit.

The Town may hold the funds obtained from the letter of credit until the Public Improvements and Common Facilities as set forth on "Exhibit B" are completed and accepted by the Town. In the event the Public Improvements and Common Facilities are not completed by the Owner within the time period set forth in this Agreement or in the manner as required by this Agreement, the Town may, at its sole discretion, use any or all of the funds to complete some or all of the Public Improvements and Common Facilities. In any event, the Town shall have no obligation to complete any or all of the Public Improvements and Common Facilities. Owner is further subject to the provisions of Section VIII.B of this Agreement, as well as the suspension of development activities by Erie including, but not limited to, the withholding of building permits and certificates of occupancy.

In the event that the cost of the Public Improvements and Common Facilities and construction is reasonably determined by Erie to be greater than the amount of the security guarantee provided by the Owner to the Town, then Erie shall furnish written

notice to Owner of the condition, and within thirty (30) days of receipt of such notice Owner shall provide Erie with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance. If Owner fails to provide Erie with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance, then Owner is in default of this Agreement, without further notice, and is subject to the provisions of Section VIII.B of this Agreement, as well as the suspension of development activities by Erie including, but not limited to, the withholding of building permits and certificates of occupancy.

4. If Erie draws on the letter of credit to correct deficiencies or complete Public Improvements and Common Facilities, any portion of said guarantee not utilized in correcting the deficiencies and/or completing improvements shall be returned to Owner within thirty (30) days after Final Acceptance of said Public Improvements and Common Facilities.

VI. MISCELLANEOUS CONSTRUCTION STANDARDS

A. Trash, Debris, Mud

Owner agrees that during construction of the Development and improvements described herein, Owner will take appropriate steps necessary to control trash, debris and wind or water erosion in the Development. If Erie determines that said trash, debris or wind or water erosion causes substantial damage or injury or creates a major nuisance, Owner agrees to abate said nuisance and/or to correct or commence to correct within 24 hours, any damage or injury, and complete within five (5) working days after notification by Erie. If Owner does not abate said nuisance, Erie may abate the nuisance and/or correct any drainage or injury without notice to Owner, at Owner's expense. Owner also agrees to take any and all reasonable steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by Erie. If Owner does not abate, or if an emergency exists, Erie may abate at Owner's expense.

B. Operation of Construction Equipment

The operation of construction equipment outside an enclosed structure shall be prohibited on weekdays between the hours of 7:00 p.m. and 7:00 a.m. On weekend days and legal holidays the operation of such equipment outside an enclosed structure shall be prohibited between the hours of 4:00 p.m. and 8:00 a.m. The Town Administrative Official may alter the hours of operation for good cause.

VII. SPECIAL PROVISIONS

A. Damage to Existing Public Improvements

Any damage to existing public improvements caused by construction of the Development shall be the Owners sole responsibility to repair. Owner shall contact the Town prior to construction to inspect the existing improvements and document

existing damages and conditions. Any damage determined solely by the Town to not be existing damages will be repaired by the Owner to the Town's satisfaction prior to Final Acceptance of the Public Improvements for the Development.

B. Maintenance of Vacant Lots

Owner shall be responsible for maintenance, including weed control, on all lots within the Development until such time the lots are developed or conveyed to a third party.

C. Installation of Landscaping and Sidewalks

1. Owner shall be responsible for the installation of landscaping and sidewalks within the Development and adjacent right-of-ways in accordance with the accepted landscape plans.
2. Owner shall be responsible for replacing landscaping and sidewalks within the Development that is damaged during construction.

D. Maintenance of Landscaping and Sidewalks

Owner shall be responsible for the maintenance of landscaping and sidewalks within the Development and adjacent right-of-way in accordance with the accepted landscape plans.

E. Sanitary Sewer

NWRF Interceptor

Owner acknowledges that the NWRF Interceptor constructed by the Town is due cost recovery at a rate of \$410.00 for each SFE. The reimbursement shall be collected prior to the issuance of a building permits within the Development.

VIII. MISCELLANEOUS TERMS

A. Vested Rights

Erie agrees that the Site Plans for the **Creekside Townhomes Site Improvement Plan - 2nd Amendment, 3rd Amendment, 4th Amendment, and 5th Amendment** constitute a "site specific development plan" pursuant to C.R.S. 24-68-101 et. Seq. (the "Vested Rights Act") and in addition, that the rights which vest pursuant to the Vested Rights Act shall vest for a period of three (3) years. This Site Plan Agreement shall be deemed to be a "development agreement" pursuant to the Vested Rights Act.

B. Default

If Owner fails to fulfill the terms and conditions of this Agreement, Erie, in its sole discretion, may declare Owner in default and may call the security and draw on the letter of credit provided for in Section V, and may further exercise all remedies available to Erie in law and equity. Erie may also, withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services until the completion of the Public Improvements and Common Facilities and/or the default has been cured by Owner. Any

costs incurred by Erie, including, but not limited to, reasonable administrative costs and reasonable attorney's fees, in pursuit of any remedies due to the breach by Owner shall be paid by Owner. Erie may deduct these costs from the Improvement Guarantee. Erie shall have the right to enforce the Owner's obligations hereunder by an action for any equitable remedy, including injunction or specific performance, or an action to recover damages. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

If Owner fails to fulfill the terms and conditions of Section V of this Agreement, or any other monetary, security or surety default, Erie, in its sole discretion, may declare Owner in default and may immediately call the security due and draw on the letter of credit provided for in Section V without notice to Owner, and may further exercise all remedies available to Erie in law and equity and as provided for herein.

C. Insurance and Safety

Owner shall, through contract requirements and other normal means, guarantee and furnish to Erie proof thereof that all employees and contractors engaged in the construction of improvements are covered by adequate Workman's Compensation Insurance and Public Liability Insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).

D. Indemnification and Release of Liability

Owner agrees to indemnify and hold harmless Erie, its officers, employees, agents, or servants, and to pay any and all judgments rendered against said persons on account of any suit, action, or claim caused by arising from, or on account of acts or omissions by Owner, its officers, employees, agents, consultants, contractors, and subcontractors, and/or suit, action, or claim resulting from mineral right disputes and/or Owner's failure to abide by the terms of this Agreement, and to pay to Erie and said persons their reasonable expenses, including but not limited to, reasonable attorney's fees and reasonable expert witness fees, incurred in defending any such suit, action or claim. Owner's obligation herein shall not apply to the extent said suit, action or claim results from any acts or omissions of officers, employees, agents, or servants of Erie or conformance with requirements imposed by Erie, said obligation of Owner shall be limited to suits, actions, or claims based upon conduct prior to "final acceptance" by Erie of the construction work. Owner acknowledges that Erie's review and acceptance of plans for development of the Development is done in furtherance of the general public's health, safety and welfare and that no immunity is waived and no specific relationship with, or duty of care to, Owner or third parties is assigned by such review acceptance.

E. Recording Agreement

Erie shall record this Agreement at Owner's expense in the office of the Clerk and Recorder, County of Boulder, State of Colorado, and Erie shall retain the recorded Agreement.

F. Binding Effect of Agreement

This Agreement shall run with the land included within the Development and shall inure to

the benefit of and be binding upon the successors and assigns of the parties hereto.

G. Assignment, Delegation and Notice

Owner shall provide to the Town Administrative Official, for approval, written notice of: 1) any proposed transfer of title to all or any portion of the Development to any successor, 2) arrangements for delegation or transfer of the Improvement obligations hereunder to any successor, and 3) any successor's written acceptance of such Improvement obligations. Owner and Owner's successor shall be jointly and severally liable for the Improvement obligations of Owner under this Agreement until written approval by the Town Administrative Official of the proposed transfer of title, delegation and acceptance of Improvement obligations, which approval shall not be unreasonably withheld or delayed.

H. Modification and Waiver

No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any sections of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

I. Addresses for Notice

Any notice or communication required or permitted thereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage, prepaid, registered or certified mail, return receipt requested, addressed as follows:

Erie:

Town of Erie
Town Administrator
P.O. Box 750
Erie, Colorado 80516-0750

Town of Erie
Town Attorney
P.O. Box 750
Erie, Colorado 80516-0750

Owner:

Meritage Homes of Colorado, Inc.
6892 South Yosemite Court
Suite 1-201
Centennial, Colorado 80112

With a copy to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

J. Force Majeure

Whenever Owner is required to complete construction, maintenance, repair, or replacement of improvements by an agreed upon deadline, Erie shall grant a reasonable extension of time if the performance cannot, as a practical matter, be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of

Owner.

K. Approvals

Whenever approval or acceptance of a matter is required or requested of Erie pursuant to any provisions of the Agreement, Erie shall act reasonably in responding to such matter.

L. Previous Agreements

All previous written agreements between the parties, their successors, and assigns, including, but not limited to, any Annexation, Pre-Annexation Agreement, or Development Agreement shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this Agreement, then this Agreement controls.

M. Title and Authority

Owner warrants to Erie that **Meritage Homes of Colorado, Inc.**, is the record owner for the property within the Development. The undersigned further warrant to have full power and authority to enter into this Agreement.

N. Severability

If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have ratified this Agreement including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

O. Attorney Fees

In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this agreement, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this Agreement.

P. Agreement Status Following Final Acceptance

Upon Final Acceptance by Erie of all improvements and compliance by Owner with all terms and conditions of this Agreement, and provided that no litigation or claim is pending relating to this Agreement, this Agreement shall terminate and no longer be in effect.

Q. Enforceability

This Agreement is made only between the Owner and Erie, or their successors and assigns, and is not intended to benefit, and may not be enforced by, any third parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.


TOWN:
TOWN OF ERIE, a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Jessica Koenig, Deputy Town Clerk

OWNER:
MERITAGE HOMES OF COLORADO, INC., an Arizona corporation

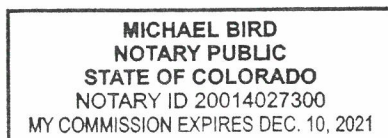
By: _____


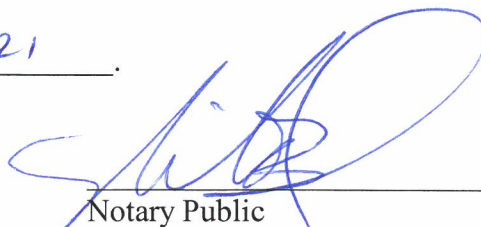
STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

Subscribed and sworn to before me this 22nd day of February, 2018, by
Glenn Nier as VP OF LAND of Meritage Homes of Colorado, Inc.

Witness my hand and official seal.

My Commission expires 12/10/2021.




Notary Public

EXHIBITS LIST

EXHIBIT A – SITE PLAN

EXHIBIT B – PUBLIC IMPROVEMENT SCHEDULE

EXHIBIT B-1 – LETTER OF CREDIT FORM

EXHIBIT A

EXHIBIT B

Creekside Townhomes

Exhibit B

Public Improvement and Common Facilities Schedule.

Thursday, February 22, 2018

PUBLIC IMPROVEMENTS

LANDSCAPE & SOIL PREPARATION

Item	Quantity	Unit	Unit Cost	Extension
Soil preparation and fine grading (5 cy / 1000)	5,129	sf	\$ 0.50	\$ 2,564.50
Deciduous trees (2 " cal)	21	ea	\$ 500.00	\$ 10,500.00
Turf Mix (Kentucky Bluegrass)	5,129	sf	\$ 1.00	\$ 5,129.00
Subtotal				\$ 18,193.50

DRAINAGE & IRRIGATION

Item	Quantity	Unit	Unit Cost	Extension
Irrigation (Kentucky Bluegrass)	5,129	sf	\$ 1.50	\$ 7,693.50
Irrigation (Drip to Trees)	21	ea	\$ 10.00	\$ 210.00
Subtotal				\$ 7,903.50

PAVING, EDGING, GROUND TREATMENT

Item	Quantity	Unit	Unit Cost	Extension
Concrete paving (6 ")	4,177	sf	\$ 6.50	\$ 27,150.50
Subtotal				\$ 27,150.50

TOTAL \$ 53,247.50
15% Contingency \$ 7,987.13
PUBLIC TOTAL \$ 61,234.63

COMMON FACILITIES

LANDSCAPE & SOIL PREPARATION

Item	Quantity	Unit	Unit Cost	Extension
Soil preparation and fine grading (5 cy / 1000)	98,991	sf	\$ 0.30	\$ 29,697.30
Deciduous trees (2 " cal)	28	ea	\$ 500.00	\$ 14,000.00
Evergreen trees (8 ")	37	ea	\$ 500.00	\$ 18,500.00
Ornamental trees (2 " cal)	53	ea	\$ 400.00	\$ 21,200.00
Deciduous & evergreen shrubs (# 5)	971	ea	\$ 35.00	\$ 33,985.00
Perennial flowers (# 1)	950	ea	\$ 18.00	\$ 17,100.00
Ornamental grasses (# 1)	458	ea	\$ 18.00	\$ 8,244.00
Planting beds (mulch + weed control)	53,756	sf	\$ 1.00	\$ 53,756.00
Native Seed Mix	20,880	sf	\$ 0.50	\$ 10,440.00
Turf Mix (Kentucky Bluegrass)	24,355	sf	\$ 1.00	\$ 24,355.00
Subtotal				\$ 231,277.30

DRAINAGE & IRRIGATION

Item	Quantity	Unit	Unit Cost	Extension
Complete irrigation system		lump		\$
Irrigation (planting bed)	53,756	sf	\$ 1.25	\$ 67,195.00
Irrigation (Kentucky Bluegrass)	24,355	sf	\$ 1.50	\$ 36,532.50
Irrigation (Native Seed Mix)	20,880	sf	\$ 0.85	\$ 17,748.00
Irrigation (Drip to Trees)	118	ea	\$ 10.00	\$ 1,180.00
Subtotal				\$ 122,655.50

PAVING, EDGING, GROUND TREATMENT

Item	Quantity	Unit	Unit Cost	Extension
Concrete paving (6 ")	14,756	sf	\$ 6.50	\$ 95,914.00
Metal edger	1,238	lf	\$ 3.50	\$ 4,333.00
Subtotal				\$ 100,247.00

ELECTRICAL

Item	Quantity	Unit	Unit Cost	Extension
Bollard lights	32	ea	\$ 1,000.00	\$ 32,000.00
Subtotal				\$ 32,000.00

FENCING, GATE, WALLS

Item	Quantity	Unit	Cost	Total
Cedar 2 Rail Fence	1061	lf	\$ 30.00	\$ 31,830.00
Open Metal Fence	1,502	lf	\$ 26.00	\$ 39,052.00
Subtotal				\$ 70,882.00

TOTAL \$ 557,061.80
15% Contingency \$ 83,559.27
COMMON TOTAL \$ 640,621.07

EXHIBIT B-1

**IRREVOCABLE LETTER OF CREDIT
INSERT PROPERTY IDENTIFICATION**

**(IF FOR 2 YEAR WARRANTY ADD APPROPRIATE ITEM: LANDSCAPING OR
HARDSCAPE OR TOTAL SUBDIVISION IMPROVEMENTS)**

Town of Erie
645 Holbrook Street
P.O. Box 750
Erie, CO 80516

No.
Issue Date:
Expiration:

Gentlemen:

We hereby authorize you to draw on us for the account of _____ up to an aggregate amount of \$_____ available by your drafts at sight accompanied by your signed statement that the above is drawn for payment of public improvements pursuant to:

Town of Erie Development Agreement dated _____, entered into between the Town of Erie, Colorado and _____ (Include name of subdivision and filing number [if applicable]).

Partial Drawings are permitted. In the event of a partial drawing, the original Letter of Credit will be returned to the Town of Erie by the issuing Bank after endorsement.

Drafts must be drawn and negotiated on or before _____ (expiration date). Each draft presented under this letter of credit must state that it is drawn under _____ (Title of Bank and identification of the Letter of Credit) and the amount endorsed on this letter of credit.

We hereby agree with the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit that such drafts will be duly honored upon the presentation to the drawee.

This Letter of Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof unless at least sixty (60) days prior to any such date we shall notify you in writing by overnight courier service that we elect not to so renew this Letter of Credit.

Except as expressly provided herein, this Letter of Credit is subject governed by the Uniform Commercial Code of the State of Colorado.

Yours very truly,

By: _____

Title: _____

Attest: _____