

McCLURE RIVER RANCH SUBDIVISION IMPROVEMENTS AGREEMENT

THIS McCLURE RIVER RANCH SUBDIVISION IMPROVEMENTS AGREEMENT ("SIA") is made and entered into this ___ day of _____, 2020, by and between Aspen Polo Partners, LLP ("Owner") and the BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, COLORADO, acting for the County of Garfield, State of Colorado, as a body politic and corporate, directly or through its authorized representatives and agents ("BOCC").

Recitals

Owner is the owner and developer of the McCLURE RIVER RANCH PUD (the "Subdivision"), which property is depicted on the Final Plat of McCLURE RIVER RANCH Subdivision ("Final Plat"). The real property subject to this SIA is described in that Final Plat, recorded at Reception Number _____ of the real estate records of Garfield County, Colorado ("Records") and incorporated by this reference.

On February 20, 2018, by Resolution No. 2018-10, recorded at Reception No. 904213 of the Records and incorporated by this reference, the BOCC approved a substantial amendment to the TCI Lane Ranch PUD (including the change of the name of the PUD) on the Subdivision. On March 13, 2018, the approved and executed PUD Guide for the Subdivision was recorded at Reception No. 904214, and the approved and executed PUD Plan Map for the Subdivision was recorded at Reception No. 904215 of the Records.

The Owner filed with the County an application to amend the PUD and to subdivide the Subdivision into Phase I and Phase II. On _____, 2020, by Resolution No. _____, recorded at Reception Number _____ of the Records and incorporated by this reference, the BOCC approved a preliminary plan for Phase I of the Subdivision which, among other things, would create six "Barn Lots," "Tract A" and "Tract B." ("Preliminary Plan Approval"). Phase II, also called "Tract C," is reserved for future platting and eventual residential development. A separate SIA will be entered by the Parties at such time as Phase II is subdivided and developed.

In accordance with the Preliminary Plan Approval, on _____, 2020, the approved and executed Amended PUD Guide for the Subdivision was recorded at Reception No. _____, and the approved and executed Amended PUD Plan Map for the Subdivision was recorded at Reception No. _____ of the Records, both of which are incorporated herein by this reference.

Owner has filed an application for approval of a Final Plat for the Subdivision. As a condition precedent to the approval of the Final Plat submitted to the BOCC as required by the laws of the State of Colorado and by the Garfield County Land Use and Development Code, as amended (LUDC), Owner wishes to enter into this SIA with the BOCC.

Owner has agreed to execute and deliver a letter of credit or other security in a form satisfactory to the BOCC to secure and guarantee Owner's performance under this Agreement and has agreed to certain restrictions and conditions regarding the sale of properties and issuance of building permits and certificates of occupancy within the subdivision, all as more fully set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises contained herein, the BOCC and Owner ("Parties") agree as follows:

Agreement

- 1. FINAL PLAT APPROVAL.** The BOCC hereby accepts and approves the Final Plat of the Subdivision, on the date set forth above, subject to the terms and conditions of this SIA, the Preliminary Plan Approval, the PUD Guide, as amended, and the requirements of the LUDC and any other

governmental or quasi-governmental regulations applicable to the Subdivision (“Final Plat Approval”). Recording of the Final Plat in the Records shall be in accordance with this SIA and at the time prescribed herein.

2. OWNERS PERFORMANCE AS TO SUBDIVISION IMPROVEMENTS.

- a. Completion Date/Substantial Compliance. Owner has constructed and installed certain and shall cause to be constructed and installed certain other subdivision improvements, identified in the Exhibits defined in subparagraph 2.a.i., below (“Subdivision Improvements”) at Owner’s expense, including payment of fees required by Garfield County and/or other governmental and quasi-governmental entities with regulatory jurisdiction over the Subdivision. Unless extended by approval of Garfield County for good cause shown, the Subdivision Improvements, shall be completed on or before _____, 20__ (“Completion Date”), in substantial compliance with the following:
- i. Plans marked “Approved for Construction” for all Subdivision Improvements prepared by _____ and submitted to the BOCC on _____, 2020, such plans being summarized in the list of drawings attached to and made a part of this SIA by reference as **Exhibit A**; the estimate of cost of completion, certified by and bearing the stamp of Owner’s professional engineer licensed in the State of Colorado (“Owner’s Engineer”), attached to and made a part of this SIA by reference as **Exhibit B**, which estimate includes a line item for 10% percent of the total cost of the Subdivision Improvements for contingencies; and all other documentation required to be submitted along with the Final Plat under pertinent sections of the LUDC (“Final Plat Documents”).
 - ii. All requirements of the Preliminary Plan Approval.
 - iii. All laws, regulations, orders, resolutions and requirements of Garfield County and all special districts and any other governmental entity or quasi-governmental authority (ies) with jurisdiction.
 - iv. The provisions of this SIA.
- b. Satisfaction of Subdivision Improvements Provisions. The BOCC agrees that if all Subdivision Improvements are constructed and installed in accordance with this paragraph 2; the record drawings have been submitted upon completion of the Subdivision Improvements, as detailed in paragraph 3(h), below; and all other requirements of this SIA have been met, then the Owner shall be deemed to have satisfied all terms and conditions of the Preliminary Plan Approval, the Final Plat Documents and the LUDC, with respect to the installation of Subdivision Improvements. For future reference, if the LOC or alternative security has been released by the County as provided herein and no notice of default has been recorded in the Records, purchasers of lots or portions of the Subdivision may rely on the fact that the Owner has fulfilled Owner’s obligations under this SIA.

3. SECURITY FOR SUBDIVISION IMPROVEMENTS (EXCEPT RE-VEGETATION).

- a. Subdivision Improvements Letter of Credit and Substitute Collateral. As security for Owner’s obligation to complete the Subdivision Improvements, Owner shall deliver to the BOCC, on or before the date of recording of the Final Plat of the Subdivision, a Letter of Credit in the form agreed to be acceptable to the BOCC, attached to and incorporated in this SIA by reference as **Exhibit C** (LOC) or in a form consistent with the Uniform

Commercial Code, C.R.S. § 4-1-101, *et seq.* and approved by the BOCC. The LOC shall be in the amount of \$(full estimate), representing the full estimated cost of completing the Subdivision Improvements, with a sufficient contingency to cover cost changes, unforeseen costs and other variables (equal to 10% of the estimated cost and as approved by the BOCC), minus \$(cost of completed improvements), the cost of Subdivision Improvements already completed as of the date of execution of this SIA, i.e., \$(reduced amount), as set forth and certified by Owner's Engineer on **Exhibit B**, to guarantee completion of the Subdivision Improvements. The LOC shall be valid for a minimum of six (6) months beyond the Completion Date for the Subdivision Improvements set forth in Paragraph 2.a., above. The BOCC, at its sole option, may permit the Owner to substitute collateral other than a Letter of Credit, in a form acceptable to the BOCC, for the purpose of securing the completion of the Subdivision Improvements subject of this Paragraph 3.a.

- b. LOC Requirements and Plat Recording. The LOC required by this SIA shall be issued by a state or national banking institution acceptable to the BOCC. If the institution issuing the LOC is not licensed in the State of Colorado and transacting business within the State of Colorado, the LOC shall be confirmed within the meaning of the Uniform Commercial Code, Letters of Credit, 4-5-101, *et seq.*, C.R.S., as amended, by a bank that is licensed to do business in the State of Colorado, doing business in Colorado, and acceptable to the BOCC. The LOC shall state that presentation of drafts drawn under the LOC shall be at an office of the issuer or confirmer located in the State of Colorado. The Final Plat of the Subdivision shall not be recorded until the security, described in this paragraph 3, below has been received and approved by the BOCC.
- c. Extension of LOC Expiration Date. If the Completion Date, identified in paragraph 2.a., above, is extended by a written amendment to this SIA, the time period for the validity of the LOC shall be similarly extended by the Owner. For each six (6) month extension, at the sole option of the BOCC, the face amount of the LOC shall be subject to re-certification by Owner's Engineer of the cost of completion of the Subdivision Improvements together with a 10% contingency amount, and review by the BOCC.
- d. Unenforceable LOC. Should the LOC expire or become void or unenforceable for any reason, including bankruptcy of the Owner or the financial institution issuing or confirming the LOC, prior to the BOCC's approval of Owner's Engineer's certification of completion of the Subdivision Improvements, Owner shall be in material breach of this SIA and shall have all rights and remedies available pursuant to the terms of this SIA.
- e. Partial Releases of Security. Owner may request partial releases of the LOC, and shall do so by means of submission to the Building and Planning Department of a "Written Request for Partial Release of LOC", in the form attached to and incorporated by this reference as **Exhibit D**, accompanied by the Owner's Engineer's stamped certificate of partial completion of improvements. The Owner's Engineer's seal shall certify that the Subdivision Improvements have been constructed in accordance with the requirements of this SIA, including all Final Plat Documents and the Preliminary Plan Approval. Owner may also request release for a portion of the security upon proof that 1) Owner has a valid contract with a public utility company regulated by the Colorado Public Utilities Commission obligating such company to install certain utility lines; and 2) Owner has paid to the utility company the cost of installation as required by the contract. The BOCC shall authorize successive releases of portions of the face amount of the LOC as portions of the Subdivision Improvements, dealt with in this Paragraph 3, are certified as complete to the BOCC by the Owner's Engineer and said certification is approved by the BOCC.
- f. BOCC's Investigation. Notwithstanding the foregoing, upon submission of the Owner's

Written Request for Partial Release of LOC, along with Owner's Engineer's certificate of partial completion of improvements, the BOCC may review the certification and may inspect and review the Subdivision Improvements certified as complete to determine whether or not they have been constructed in compliance with relevant specifications, as follows:

- i. If no letter of potential deficiency is furnished to Owner by the BOCC within fifteen (15) business days of submission of Owner's Written Request for Partial Release of LOC, accompanied by Owner's Engineer's certificate of partial completion of improvements, all Subdivision Improvements certified as complete shall be deemed approved by the BOCC, and the BOCC shall authorize release of the appropriate amount of security including the 10% contingency associated with the released portion of the security.
 - ii. If the BOCC chooses to inspect and determines that all or a portion of the Subdivision Improvements certified as complete are not in compliance with the relevant specifications, the BOCC shall furnish a letter of potential deficiency to the Owner within fifteen (15) business days of submission of Owner's Written Request for Partial Release of LOC accompanied by Owner's Engineer's certificate of partial completion of improvements.
 - iii. If a letter of potential deficiency is issued identifying a portion of the certified Subdivision Improvements as potentially deficient, then all Subdivision Improvements not identified as potentially deficient shall be deemed approved by the BOCC, and the BOCC shall authorize release of the amount of security related to the Subdivision Improvements certified as complete and not identified as potentially deficient together with the 10% contingency associated with the released portion of the security.
 - iv. With respect to Subdivision Improvements identified as potentially deficient in a letter of potential deficiency, the BOCC shall have thirty (30) days from the date of the letter of potential deficiency to complete the initial investigation, begun under subparagraph 3.f.ii., above, and provide written confirmation of the deficiency(ies) to the Owner.
 - v. If the BOCC finds that the Subdivision Improvements are complete, in compliance with the relevant specifications, then the appropriate amount of security shall be authorized for release within ten (10) business days after completion of such investigation.
- g. BOCC Completion of Improvements and Other Remedies. If the BOCC finds, within the thirty (30) day period of time, defined in subparagraph 3.f.iv. above, that the Subdivision Improvements are not complete, or if the BOCC determines that the Owner will not or cannot construct any or all of the Subdivision Improvements, whether or not Owner has submitted a written request for release of LOC, the BOCC may withdraw and employ from the LOC such funds as may be reasonably necessary to complete construction of the Subdivision Improvements in accordance with the specifications, up to the face amount or remaining face amount of the LOC. In such event, the BOCC shall make a written finding at a public meeting after notice to Owner regarding Owner's failure to comply with this SIA prior to requesting payment from the LOC, in accordance with the provisions of Article 13 of the LUDC.
- h. Final Release of Security. Upon completion of all Subdivision Improvements, Owner shall submit to the BOCC, through the Community Development Department: 1) record

drawings bearing the stamp of Owner's Engineer certifying that all Subdivision Improvements including off-site improvements, have been constructed in accordance with the requirements of this SIA, including all Final Plat Documents and the Preliminary Plan Approval, in hard copy and digital format acceptable to the BOCC; 2) copies of instruments conveying real property and other interests which Owner is obligated to convey to the Homeowner's Association of the Subdivision at the time of Final Plat Approval; and 3) a Written Request for Final Release of LOC, in the form attached to and incorporated herein as **Exhibit E**, along with Owner's Engineer's stamp and certificate of final completion of improvements.

- i. The BOCC shall authorize a final release of the LOC after the Subdivision Improvements are certified as final to the BOCC by the Owner's Engineer and said final certification is approved by the BOCC. If the BOCC finds that the Subdivision Improvements are complete, in accordance with the relevant specifications, the BOCC shall authorize release of the final amount of security within ten (10) business days following submission of the Owner's Written Request for Final Release of LOC accompanied by the other documents required by this paragraph 3.h.
- ii. Notwithstanding the foregoing, upon Owner's Written Request for Final Release of LOC, accompanied by Owner's Engineer's certificate of final completion of improvements, the BOCC may determine to inspect and review the Subdivision Improvements certified as complete. If the BOCC does so review and inspect, the process contained in paragraph 3.f., above, shall be followed.
- iii. If the BOCC finds that the Subdivision Improvements are complete, in accordance with the relevant specifications, the BOCC shall authorize final release of security within ten (10) days after completion of such investigation.
- iv. If the BOCC finds that the Subdivision Improvements are not complete, in accordance with the relevant specifications, the BOCC may complete remaining Subdivision Improvements, or institute court action in accordance with the process outlined in paragraph 3.g., above.

4. SECURITY FOR REVEGETATION (If Required). NOT APPLICABLE.

5. **WATER SUPPLY AND WASTEWATER/SEWER.** As stated in paragraph 13, below, prior to issuance by the BOCC of any certificates of occupancy for any residences or other habitable structures constructed within the Subdivision, the owner of the habitable structure shall install, connect and make operable a water supply and distribution system for potable water, fire protection and irrigation water in accordance with approved plans and specifications. All easements necessary for installation, operation, service and maintenance of such water supply and distribution system(s) shall be as shown on the Final Plat. Wastewater and sewer collection shall be pursuant to private systems on Lots or Tracts. Owner shall deposit with the Garfield County Clerk and Recorder executed originals of the instruments of conveyance for easements appurtenant to the water supply(s), for recordation following recording of the Final Plat and this SIA. All facilities and equipment contained within the water supply system shall be transferred by Owner to the Homeowner's Association of the Subdivision by bill of sale.
6. **PRIVATE ROADS.** All roads within the Subdivision shall be private roads owned by the Homeowner's Association. On the Final Plat, Owner shall dedicate to all emergency service providers easements for access throughout the Subdivision. The Homeowner's Association of the Subdivision shall be solely responsible for the maintenance, repair and upkeep of said easements, including the traveled surface of the roadways and portions of the rights-of-way outside of the traveled surface. The BOCC shall not be obligated to maintain any road easements within the Subdivision.
7. **UTILITY EASEMENTS.** Whether or not utility easements exist elsewhere in the Subdivision, all roads within the Subdivision shall contain easements for installation and maintenance of utilities. Public utility easements shall be dedicated by the Owner to the public utilities on the face of the Final Plat, subject to the Garfield County Road and Right-of-Way Use Regulations, recorded as Reception No. 643477, in the records of the Garfield County Clerk and Recorder, as amended. The Homeowner's Association of the Subdivision shall be solely responsible for the maintenance, repair and upkeep of said public utility easements, unless otherwise agreed to with the public utility company(ies). The BOCC shall not be obligated for the maintenance, repair and upkeep of any utility easement within the Subdivision. In the event a utility company, whether publicly or privately owned, requires conveyance of the easements dedicated on the face of the Final Plat by separate document, Owner shall execute and record the required conveyance documents.
8. **CONVEYANCE OF OPEN SPACE.** Not Applicable.
9. **INDEMNITY.** The Owner shall indemnify and hold the BOCC harmless and defend the BOCC from all claims which may arise as a result of the Owner's installation of the Subdivision Improvements and any other agreement or obligation of Owner, related to development of the Subdivision, required pursuant to this SIA. The Owner, however, does not indemnify the BOCC for claims made asserting that the standards imposed by the BOCC are improper or the cause of the injury asserted, or from claims which may arise from the negligent acts or omissions of the BOCC or its employees. The BOCC shall notify the Owner of receipt by the BOCC of a notice of claim or a notice of intent to sue, and the BOCC shall afford the Owner the option of defending any such claim or action. Failure to notify and provide such written option to the Owner shall extinguish the BOCC's rights under this paragraph. Nothing in this paragraph shall be construed to constitute a waiver of governmental immunity granted to the BOCC by Colorado statutes and case law.
10. **ROAD IMPACT FEE.** Road Impact Fees will be due at the time of building permit and will be

assessed in relation to the square footage and type of dwelling unit or other structure that is proposed.

- 11. FEES IN LIEU OF DEDICATION OF SCHOOL LAND.** Owner shall make a cash deposit in lieu of dedicating land to the RE-1 School District, calculated in accordance with the LUDC and the requirements of state law. The Owner and the BOCC acknowledge and agree that the cash in lieu payment for the Subdivision is calculated as follows: unimproved per acre market value of land, based upon an appraisal submitted to the BOCC by Owner, i.e., \$_____ ; and Land dedication standard: _____ single-family dwelling units x _____ acres [multi-family dwelling units x _____ acres] equals _____ acres. The Owner, therefore, shall pay to the Garfield County Treasurer, at or prior to the time of recording of the Final Plat, _____ (\$_____) as a payment in lieu of dedication of land to the _____ School District. Said fee shall be transferred by the BOCC to the school district in accordance with the provisions of 30-28-133, C.R.S., as amended, and the LUDC. The Owner agrees that it is obligated to pay the above-stated fee, accepts such obligations, and waives any claim that Owner is not required to pay the cash in lieu of land dedication fee. The Owner agrees that Owner will not claim, nor is Owner entitled to claim, subsequent to recording of the Final Plat of the Subdivision, a reimbursement of the fee in lieu of land dedication to the RE-1 School District.
- 12. SALE OF LOTS.** No lots, tracts, or parcels within the Subdivision may be separately conveyed prior to recording of the Final Plat in the records of the Garfield County Clerk and Recorder.
- 13. BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY.** As one remedy for breach of this SIA, the BOCC may withhold issuance of building permits for any residence or other habitable structure to be constructed within the Subdivision. Further, no building permit shall be issued unless the Owner demonstrates to the satisfaction of the Carbondale Fire Protection District (District), if the Fire District has so required, that there is adequate water available to the construction site for the District's purposes. No certificates of occupancy shall issue for any habitable building or structure, including residences, within the Subdivision until all Subdivision Improvements, except revegetation and off-site improvements, have been completed and are operational as required by this SIA.
- 14. CONSENT TO VACATE PLAT.** In the event the Owner fails to comply with the terms of this SIA, the BOCC shall have the ability to vacate the Final Plat as it pertains to any lots for which building permits have not been issued. As to lots for which building permits have been issued, the Plat shall not be vacated and shall remain valid. In such event, the Owner shall provide the BOCC a plat, suitable for recording, showing the location by surveyed legal description of any portion of the Final Plat so vacated by action of the BOCC. If such a Plat is not signed by the BOCC and recorded, or if such Plat is not provided by the Owner, the BOCC may vacate the Final Plat, or portions thereof, by resolution. It is specifically agreed that this paragraph 14 applies to the Subdivision as a multi-phased project and, therefore, in the event the BOCC vacates the Final Plat as to the Subdivision, subject of this SIA, the BOCC may also withhold approval of a proposed final plat for a future phase, if Subdivision Improvements covered by this SIA are not completely installed and operable.
- 15. ENFORCEMENT.** Notwithstanding any other provision of this SIA to the contrary, the BOCC shall not, except in the case of an emergency, exercise any right of enforcement or remedy, including

drawing on any security, vacating the Final Plat, refusing to issue certificates of occupancy or building permits, initiating litigation or any other right of enforcement or remedy, until the BOCC has provided Owner a notice of default, a reasonable time to cure any identified deficiency(ies) and opportunity to be heard at a public meeting to discuss the purported default, and the BOCC shall make findings in writing concerning such default prior to commencing any action based on such default. In addition to any rights provided by Colorado statute, the withholding of building permits and certificates of occupancy, provided for in paragraph 13, above, the provisions for release of security, detailed in paragraph 3, above, and the provisions for plat vacation, detailed in paragraph 14, above, it is mutually agreed by the BOCC and the Owner, that the BOCC, without making an election of remedies, and any purchaser of any lot within the Subdivision shall have the authority to bring an action in the Garfield County District Court to compel enforcement of this SIA. Nothing in this SIA, however, shall be interpreted to require the BOCC to bring an action for enforcement or to withhold permits or certificates or to withdraw unused security or to vacate the Final Plat or a portion thereof, nor shall this paragraph or any other provision of this SIA be interpreted to permit the purchaser of a lot to file an action against the BOCC.

16. NOTICE BY RECORDATION. This SIA shall be recorded in the Office of the Garfield County Clerk and Recorder and shall be a covenant running with title to all lots, tracts and parcels within the Subdivision. Such recording shall constitute notice to prospective purchasers and other interested persons as to the terms and provisions of this SIA.

17. SUCCESSORS AND ASSIGNS. The obligations and rights contained herein shall be binding upon and inure to the benefit of the successors and assigns of the Owner and the BOCC.

18. CONTRACT ADMINISTRATION AND NOTICE PROVISIONS. The representatives of the Owner and the BOCC, identified below, are authorized as contract administrators and notice recipients. Notices required or permitted by this SIA shall be in writing and shall be effective upon the date of delivery, or attempted delivery if delivery is refused. Delivery shall be made in person, by certified return receipt requested U.S. Mail, receipted delivery service, addressed to the authorized representatives of the BOCC and the Owner at the address set forth below:

Owner: Aspen Polo Partners LLP
c/o Marc Ganzi, Manager
mganzi@digitalbridgellc.com
w/copy to,
Joseph E. Edwards, III
Klein Coté Edwards Citron LLC
Aspen, CO 81611
Phone: (970) 925-8700
jee@kceclaw.com

BOCC: Board of County Commissioners
of Garfield County, Colorado
c/o Community Development Director
108 8th Street, Suite 401
Glenwood Springs, CO 81601
Phone: (970) 945-8212

- 19. AMENDMENT AND SUBSTITUTION OF SECURITY.** This SIA may be modified, but only in writing signed by the parties hereto, as their interests then appear. Any such amendment, including, by way of example, extension of the Completion Date, substitution of the form of security, or approval of a change in the identity of the security provider/issuer, shall be considered by the BOCC at a scheduled public meeting. If such an amendment includes a change in the identity of the provider/issuer of security, due to a conveyance of the Subdivision by the Owner to a successor in interest, Owner shall provide a copy of the recorded assignment document(s) to the BOCC, along with the original security instrument. Notwithstanding the foregoing, the parties may change the identification of notice recipients and contract administrators and the contact information provided in paragraph 18, above, in accordance with the provisions of that paragraph and without formal amendment of this SIA and without consideration at a BOCC meeting.

- 20. COUNTERPARTS.** This SIA may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

- 21. VENUE AND JURISDICTION.** Venue and jurisdiction for any cause arising out of or related to this SIA shall lie with the District Court of Garfield County, Colorado, and this SIA shall be construed according to the laws of the State of Colorado.

IN WITNESS WHEREOF, the parties have signed this SIA to be effective upon the date of Final Plat Approval for the Subdivision.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF GARFIELD COUNTY, COLORADO**

Clerk to the Board

By: _____
Chairman

Date: _____

**OWNER:
ASPEN POLO PARTNERS LLP**

By: _____

(Name and Title)

Date: _____

STATE OF COLORADO)
)ss.
COUNTY OF GARFIELD)

Subscribed and sworn to before me by _____, an authorized representative of

Aspen Polo Partners, LLP, Owner of the Subdivision, this ____ day of _____, 2020.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public