

**RESOLUTION NO. 51**

**SERIES 2017**

**RESOLUTIONS OF THE CRESTED BUTTE TOWN  
COUNCIL APPROVING A DEVELOPMENT  
IMPROVEMENTS AGREEMENT FOR THE SLATE  
RIVER DEVELOPMENT**

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado; and

WHEREAS, on May 6, 2017, Gunnison County adopted Resolution No. 17-\_\_\_\_ approving the application from Cypress Foothills LP ("Developer") for Land Use Change Permit No: 2016-00009 regarding the subdivision of a 44.5 acre parcel (the "Property") further divided into two parcels bisected by the Slate River, the West Parcel consisting of 14.1 acres, and the East Parcel consisting of 30.4 acres; and

WHEREAS, the West Parcel will be annexed to the Town pursuant to the *Pre-Annexation Agreement* between the Town of Crested Butte and Developer, recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on March 14, 2016, bearing Reception No: 638399 and the *Amendment to the Pre-Annexation Agreement*, recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on December 13, 2016, bearing Reception No: 643828. The majority of the West Parcel will be conveyed to the Town with the exception of a parcel known as "Applicant Retained Lands;" and

WHEREAS, the East Parcel will be subdivided into 23 single-family residential lots of up to 5,000 square feet, with the opportunity for a 750 square feet accessory structure, and a Homeowner's Association lot, on which an owner's complex may be potentially constructed. All of which will be served with municipal water and sewer; and

WHEREAS, the Town staff has recommended to the Town Council that the Town enter into an agreement for the Developer's construction of and warranty for certain infrastructure improvements on the Property; and

WHEREAS, the Town Council finds hereby that the Town entering into an agreement for the Developer's construction of certain improvements is in the best interests of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT:

1. **Findings.** The foregoing recitals are hereby fully incorporated herein.

2. **Authorization of Mayor.** Based on the foregoing findings, the Town Council hereby authorizes the Mayor to execute the “Development Improvements Agreement for Slate River Development” in substantially the same form as attached hereto as **Exhibit “A.”**

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS  
8<sup>th</sup> DAY OF AUGUST, 2017.

TOWN OF CRESTED BUTTE, COLORADO

By:   
Glenn Michel, Mayor

ATTEST

  
Lynelle Stanford, Town Clerk



**EXHIBIT "A"**

**Development Improvements Agreement -Cypress Foothills**

[attach approved form here]

**DEVELOPMENT IMPROVEMENTS AGREEMENT  
FOR  
SLATE RIVER DEVELOPMENT**

THIS DEVELOPMENT IMPROVEMENTS AGREEMENT ("Agreement") is entered into this 8<sup>th</sup> day of August, 2017, by and between the Town of Crested Butte, Colorado, whose address is P.O. Box 39, Crested Butte, Colorado, 81224 ("Town") and Cypress Foothills, L.P., a Texas limited partnership, whose address is 8343 Douglas Avenue, Suite 200, Dallas, Texas 75225 ("Developer").

**1.0 BACKGROUND.**

**1.1 The Development.** On June 6, 2017, Gunnison County adopted Resolution No. 17-25 approving the Developer's application for Land Use Change Permit No: 2016-00009 regarding the subdivision of a 44.5 acre parcel ("the Property") further divided into two parcels bisected by the Slate River, the West Parcel consisting of 14.1 acres, and the East Parcel consisting of 30.4 acres. The Property is located in the SW1/4 of Section 35, Township 13 South, Range 86 West, 6<sup>th</sup> P.M., Tract Q (aka Lot 13) and as identified on the plat titled: *APETURE Situated in the SW1/4, Section 35, T.13S., R.86W. of the 6<sup>th</sup> P.M., Gunnison County, Colorado*, created by SGM, dated June 5, 2017 recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on August 1<sup>st</sup>, 2017, bearing Reception No: 648057.

a. The West Parcel will be annexed to the Town pursuant to the *Pre-Annexation Agreement* between the Town of Crested Butte and Developer, recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on March 14, 2016, bearing Reception No: 638399 ("*Pre-Annexation Agreement*") and the *Amendment to the Pre-Annexation Agreement*, recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on December 13, 2016, bearing Reception No: 643828 ("*Amended Pre-Annexation Agreement*"). Pursuant to and in accordance with the terms and conditions of the *Pre-Annexation Agreement* and the *Amended Pre-Annexation Agreement*, the majority of the West Parcel will be conveyed to the Town with the exception of a parcel known as "Applicant Retained Lands."

b. The East Parcel will be subdivided into 23 single-family residential lots of up to 5,000 square feet, with the opportunity for a 750 square feet accessory structure, and a Homeowner's Association lot, on which an owner's complex may be potentially constructed.

**1.2 Related Agreements: Connection to Town Water and Sewer Systems.**

a. **East Parcel Wastewater Infrastructure.** According to Section 6.4.13. of the *Pre Annexation Agreement*, the Developer is responsible for:

the installation of all utility infrastructure necessary to connect the residential lots on the East Parcel to the Town's sewer system pursuant to and in accordance with

the terms and conditions of the Sewer Connection Agreement. All wastewater infrastructure shall be constructed in accordance with the Town Specifications, dedicated to the Town, and maintained by the Town following acceptance thereof, subject to a two-year warranty by [Developer].

b. **East Parcel Water Infrastructure.** According to Section 7 and 7.5 of the *Amended Pre-Annexation Agreement*, Developer and the Town “will enter into a water services agreement” governing the delivery of Town water to the East Parcel, and Developer will install:

all utility infrastructure necessary to connect the Town’s water systems to the East Parcel pursuant to and in accordance with the terms and conditions of a standard development improvements agreement to be executed by [Developer] . . . that is (a) substantially similar to the development improvement agreements the Town has previously used, and (b) not inconsistent with this Amendment. Such infrastructure shall be constructed in accordance with the Town Specifications, dedicated to the Town, and maintained by the Town following acceptance thereof, subject to a two-year warranty by the [Developer]. [Developer] shall pay the cost and expense of the Town’s review and acceptance of the utility infrastructure.

1.3 **Related License Agreement: Eighth Street Right-of-Way.** According to the *License Agreement* dated May 17, 2017 between the Town and Developer, the Town has allowed Developer to include the Eighth Street Right-of-Way in its Voluntary Clean-up (“V-CUP”) Application, to access the Eighth Street Right-of-Way to perform certain work, and to construct Eighth Street and associated utility infrastructure, including extension of the McCormick Ditch. The License Agreement provides that Developer will:

enter into a standard development improvements agreement with the Town that is (a) substantially similar to the development agreements the Town has previously used and (b) not inconsistent with the Annexation Agreement. All infrastructure constructed pursuant to such development improvement agreement shall be constructed in accordance with the Town Specifications, dedicated to the Town, and maintained by the Town following acceptance thereof, subject to a two-year warranty by [Developer].

1.4 **Pyramid Avenue Improvements.** Developer has agreed to construct a portion of Pyramid Avenue for the Slate River Development which will be annexed into the Town. Developer will provide the Town with a two-year warranty for Pyramid Avenue Improvements on the west side of the Slate River.

1.5 **Related Development Improvements Agreement.** Developer and Gunnison County have entered into that certain Development Improvements Agreement for Slate River Development, dated August 1<sup>st</sup>, 2017 (the “County DIA”), that *inter alia* requires Developer to guaranty construction of certain public improvements to be located in Gunnison County, Colorado. The County DIA and this Agreement satisfy the requirements of the *Annexation Agreement* and *Amendment to the Pre Annexation Agreement* to

execute development improvements and provide a two-year warranty for sewer and water infrastructure. The *County DIA* and this Agreement also satisfies the Developer's requirements set forth in the *License Agreement* to execute a development improvements agreement and provide a two-year warranty for Eighth Street Improvements. The parties acknowledge and agree that by entering into the County DIA and this Agreement, Developer has satisfied its obligations to the Town to (a) enter into a development improvements agreement with the Town and (b) provide the Town with a warranty of the improvements it constructs, whether such obligations exist under the Pre-Annexation Agreement, the Amendment to the Pre-Annexation Agreement, the License Agreement, the Town Code, or otherwise.

## 2.0 DEVELOPER CONSTRUCTION OF IMPROVEMENTS.

2.1 **Construction.** Developer covenants and agrees with the Town to construct, at its sole cost, those public improvements ("Improvements") listed on Exhibit A, Developer's Cost Estimate, as approved by the Town and documented by the Engineering Plans and Specifications submitted to Gunnison County as part of the final plat approval for Slate River Development. Following construction of the Improvements, Developer shall provide to the Town:

a. Confirmation by a registered engineer that all construction done pursuant to this Agreement has been completed in accordance with the *Engineering Plan Set, Slate River Development, Sheets 1-32*, by SGM, dated May 17, 2017, as revised and submitted to Gunnison County; and

b. "As-built" drawings for all the Improvements before preliminary acceptance by the Town as set forth in Subsection 17-5-80(g)(5) of the Subdivision Regulations contained in Chapter 17 of the Crested Butte Municipal Code ("Town Code").

c. Further, Developer shall hire one (1) or more inspectors acceptable to the Town to provide inspection services to the reasonable satisfaction of the Town Manager with respect to the construction of the Improvements to be constructed pursuant to this Agreement.

2.2 **Force Majeure.** If Developer is delayed in commencing or completing construction of the Improvements, as required herein, by reasons of strikes or other labor troubles, unavailability of materials, national emergency, any rule, order or regulation of any governmental authority, or other similar cause not within Developer's control, and if prompt written notice of said cause of delay is given to Town by Developer, then the time for Developer to commence or complete construction, as the case may be, shall be deemed extended by the period of time during which said cause of delay shall continue.

## 3.0 QUALITY OF CONSTRUCTION/WARRANTY.

3.1 **Quality of Construction.** The construction of the Improvements in Section 2.0 shall be done in a good and workmanlike manner.

3.2 **Warranty.** Developer warrants that the Improvements shall remain free from defects for a period of two (2) years from the date that the Town preliminarily accepts the Improvements as provided in

Section 8 of this Agreement. During such two-year period, any defect determined to exist with respect to such improvements shall be repaired or the improvement replaced, at the Town's option, at the sole cost of the Developer. With respect to snowplowing, following the completion of both annexation and preliminary acceptance, the Town shall be responsible for snowplowing Pyramid Avenue from its intersection with Gothic Road to its intersection with Eighth Street, and the Developer or its successors shall be responsible for snowplowing Pyramid Avenue east of its intersection with Eighth Street. The Town shall have no other obligation with respect to the improvements, except for normal routine maintenance, until they have been finally accepted by the Town in accordance with Subsection 8.2. Other than normal routine maintenance, Developer shall remain responsible for all maintenance of and repairs to the improvements until final acceptance by the Town in accordance with Section 8.2 of this Agreement.

3.3 Notice of Default; Cure Period. Except as provided in Section 3.4 with respect to emergency repairs, the Town shall provide notice to Developer if inspection reveals that any improvement is defective for any reason. Developer shall have thirty (30) days from the giving of such notice to cure the defect. Such thirty-day time limit may be extended by the Town if the Town determines that such defect cannot reasonably be cured within such thirty-day period. In the event Developer fails to cure the defect within the thirty-day period or any extension thereof granted by the Town, the Town may declare a default under this Agreement without further notice. No notice shall be required with respect to emergency repairs except as provided in Section 3.4.

3.4 Emergency Repairs. If at any time it appears that the improvements may be significantly damaged or destroyed as a result of a bona fide emergency, the Town shall have the right, but not the duty, to enter upon the Property and perform such repairs and take such other action as may be reasonably required in the Town's judgment to protect and preserve the improvements. The Town shall have no duty to inspect the improvements to identify emergency situations which may arise. Prior to taking any action pursuant to this Section 3.4, the Town shall make a reasonable effort to advise Developer of the existence and nature of the emergency. If, after reasonable efforts, Developer cannot be located, the Town shall have the right to enter the Property and perform any needed emergency repairs as herein provided; and, upon demand, Developer shall reimburse the Town for the costs of such emergency repairs. Failure of Developer to pay to the Town the costs of such emergency repairs within fifteen (15) days after demand shall constitute a default as provided in Section 9 of this Agreement.

#### 4.0 COMPLIANCE WITH LAW.

4.1 Compliance with Law. When fulfilling its obligations under this Agreement, Developer shall comply with all relevant laws, ordinances, and regulations in effect at the time of execution of this Agreement. Developer shall also be subject to laws, ordinances and regulations in effect at the time that the improvements are preliminarily accepted by Town.

4.2 Compliance with Building Permits. When fulfilling its obligations under this Agreement, Developer shall strictly comply with the terms, conditions, limitations and requirements of any Building Permit which may be required by the Town for the construction of the Improvements.

5.0 TRANSFER OF TITLE OF IMPROVEMENTS. Developer shall cause Improvements to be conveyed to the Town by bill of sale with full warranty of title (if personal property), free and clear of all liens, encumbrances and restrictions upon the determination of the Town Manager that such Improvements have been satisfactorily completed and that acceptance of such Improvements by the Town is proper in accordance with the provisions of Section 8. Conveyance of such Improvements shall be made by an instrument acceptable as to form and substance by the Town Attorney.

6.0 PERFORMANCE GUARANTY. In order to secure all obligations of the Developer herein, Developer shall, at Developer's sole cost, and before starting work on any of the Improvements other than Pyramid Avenue and Aperture Way, obtain and provide to the Town as a guarantee of the performance of its obligations hereunder, including its obligation with respect to the two-year warranty period, the following cash or bond in the amount of \$1,026,528.88 (the "Performance Guaranty"). The amount is calculated to cover 125% of the cost of certain Improvements located within the Town boundaries; and 25% of the cost of certain Improvements located in the County, all as further specified in Exhibit A, Developer's Cost Estimate, which amount shall be held by Town through the two-year warranty set forth in Section 3.2, subject to Section 6.1 below.

6.1 Request for Partial Release of Performance Guaranty. Developer may make periodic requests for the partial release of the Performance Guaranty in accordance with the provisions of this Agreement. All such requests shall be in writing to the Town Manager, shall be for a reduction of at least twenty five percent (25%) of the total original Performance Guaranty or any multiple thereof, and shall be accompanied by an invoice for the portion of the work reflected in the request. No more than one (1) request for a partial release of the Performance Guaranty may be submitted each month. The last twenty five percent (25%) of the Performance Guaranty may not be released until all of the Improvements have been preliminarily accepted, the two-year warranty period set forth in Section 3.2 has run, and the Improvements are finally accepted by the Town.

7.0 RELEASE OF GUARANTY. Developer's Performance Guaranty shall be released and returned to Developer with interest at a rate one percent less than received by the Town on such funds, only at such time as the Town determines, in its sole discretion, that all of the Improvements have been properly constructed or installed, the two-year warranty period set forth in Section 3.2 has expired, and the Improvements are finally accepted.

8.0 ACCEPTANCE.

8.1 Preliminary Acceptance. Preliminary acceptance of the Improvements shall occur at the time indicated in paragraph 6 of the County DIA. The Town shall inspect the Improvements and

shall notify Developer within 14 days in writing of nonacceptance or preliminary acceptance. If the Improvements are not acceptable, the Town shall state the reasons for nonacceptance and outline the necessary corrective measures.

**8.2 Final acceptance and Release of Collateral.**

a. Twenty-four (24) months following preliminary acceptance, the Town shall inspect all Improvements for final acceptance. The Town Manager shall notify the Developer in writing of nonacceptance or final acceptance. If the Improvements are not acceptable, the reason for nonacceptance shall be stated in writing, and corrective measures shall be agreed upon by the Town and Developer and timely completed by Developer.

b. Upon final acceptance, the Town shall release the remaining collateral and assume all future maintenance and repair responsibilities for the Improvements.

c. The Town shall not be required to accept any of the Improvements until the Town Manager determines that:

i. The Improvements have been satisfactorily completed in accordance with the approved plans and specifications for the Improvements;

ii. Developer has delivered to the Town the as-built drawings; and

iii. Developer has delivered to the Town instruments conveying such Improvements to the Town in accordance with Section 5.0.

**9.0 DEFAULT.** The following conditions, occurrences or actions shall constitute a default by Developer under this Agreement:

**9.1** Developer's failure to construct improvements in accordance with the approved plans and specifications for the Improvements and this Agreement;

**9.2** Developer's failure to cure defective construction of any Improvement within the applicable cure period as provided in this Agreement;

**9.3** Developer's failure to perform work on either the Improvements or the improvements subject to the County DIA for a period of more than forty-five (45) consecutive days, except for delays occasioned by winter weather conditions or other reasons beyond Developer's control, without the prior written approval of the Town;

**9.4** Developer's insolvency, the appointment of a receiver for Developer, or the filing of a voluntary or involuntary petition in bankruptcy respecting Developer;

9.5 Foreclosure of any lien against the Property or a portion of the Property or assignment or conveyance of all or part of the Property in lieu of foreclosure prior to final acceptance of the Improvements by the Town;

9.6 Developer's failure to pay to Town upon demand the cost of emergency repairs performed in accordance with this Agreement; or

9.7 Developer's sale of any real property located on the West Parcel or transfer of any interest in real property located on the West Parcel prior to preliminary acceptance of the Improvements.

The Town may not declare a default until thirty (30) days' advance written notice has been given to Developer; provided, however, that such notice shall not be required with respect to any defective construction for which thirty (30) days' notice of right to cure has already been given in accordance with Section 3.3.

10.0 MEASURE OF DAMAGES. The measure of damages for breach of this Agreement by Developer shall be the reasonable costs of completing the Improvements, including design, engineering, legal and inspection costs. For Improvements upon which construction has not begun, the amount of the Performance Guaranty shall be prima facie evidence of the cost of completion; however, the amount of the Performance Guaranty does not establish the extent of Developer's liability under this Agreement. The Town shall be entitled to, but not obligated to, complete all unfinished Improvements after the time of default regardless of the extent to which development has taken place on the Property or whether development has even commenced.

11.0 TOWN'S RIGHTS UPON DEFAULT. In the event of default, the Town shall have the following rights and remedies set forth in this section. The remedies provided for herein are cumulative in nature.

11.1 Construct Improvements. The Town may, but shall not be required to, have the Improvements constructed by such means and in such manner as the Town shall determine, without the necessity of public bidding.

11.2 Use of Guaranty. If the Town elects to have the Improvements constructed, it shall have the right to use Developer's Performance Guaranty to pay for the construction of such Improvements. If the amount of the Performance Guaranty exceeds the costs of constructing the Improvements as set forth in this Agreement, the Town shall deliver any excess funds to Developer. If the Performance Guaranty is insufficient to fully pay such costs, Developer shall, upon demand, pay such deficiency to the Town.

11.3 Rights under the Law. The Town and Cypress may exercise such rights as they may have under Colorado law.

12.0 INTEREST. Any sum which is required to be paid by Developer to the Town under this Agreement and which is not timely paid shall accrue interest at eighteen percent (18%) per annum, commencing as of the date such sum was due.

13.0 PAYMENT OF FEES AND CHARGES. Developer agrees to pay all fees and other charges in a timely manner as required by the Town, including but not limited to building permit fees, inspection fees and tap fees imposed by Town ordinance, resolution or motion, or by the terms and conditions of this Agreement.

14.0 EROSION CONTROL. Developer shall comply with the applicable provisions of Section 17-6-50 of the Crested Butte Municipal Code during all stages of Improvement construction.

15.0 NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on this Agreement. It is the express intention of the Town and Developer that any person other than the Town or Developer receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

16.0 ATTORNEYS FEES. If any action is brought in a court of law by either party to this Agreement concerning the arbitration, should the parties so choose, enforcement, interpretation or construction of this Agreement, or any documents provided for herein, the substantially prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorneys' fees, as well as costs, including expert witness fees, incurred in the prosecution or defense of such action.

17.0 INDEMNIFICATION. Developer agrees to indemnify and hold the Town, its officers, employees, agents and insurers harmless from and against all liability, claims and demands on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the construction of the Improvements if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, intentional act or other fault of Developer, any subcontractor of Developer, or any officer, employee, representative or agent of Developer or of any subcontractor of Developer, or which arise out of any workers' compensation claim of any employee of Developer or of any employee of any subcontractor of Developer. Developer agrees to 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 other costs and expenses related thereto, including court costs and attorneys' fees, whether or not any such liability, claims or demands alleged are determined to be groundless, false, or fraudulent.

18.0 NO WAIVER. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver unless

expressly provided for by a written amendment to this Agreement signed by both the Town and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by Developer or the acceptance of any Improvements.

19.0 RECORDATION. This Agreement shall be recorded by the Town in the office of the Clerk and Recorder of Gunnison County, Colorado, and Developer shall pay to the Town the costs thereof upon demand.

20.0 IMMUNITY. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign immunity under any applicable state or federal law.

21.0 PERSONAL JURISDICTION AND VENUE. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to the Agreement or the Performance Guaranty, shall be deemed to be proper only if such action is commenced in the District Court of Gunnison County, Colorado. Developer expressly waives its right to bring such action in or to remove such action to any other court, whether state or federal.

22.0 CODE CHANGES. References in this Agreement to any provision of the Town's Municipal Code or to any Town or other governmental standard are intended to refer to any subsequent amendments and/or revisions to such Code or standard. Such amendments or revisions shall be binding upon Developer.

23.0 NON ASSIGNABILITY. This Agreement may not be assigned by Developer without the prior written consent of the Town.

24.0 NOTICES. Any notice required or permitted hereunder shall be in writing and shall be sufficient if personally delivered, mailed by certified mail, return receipt requested, or sent by facsimile, addressed as follows:

If to the Town:

Town of Crested Butte  
Attn: Town Manager  
P. O. Box 39  
Crested Butte, CO 81224  
(970) 349-5338  
Fax No. (970) 349-6626

With a Copy (Which Shall Not Constitute Notice to the Town) to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Developer:

Cypress Foothills, LP  
Attention: Cameron Aderhold  
8343 Douglas Ave., Suite 200  
Dallas, Texas 75225  
Facsimile: 214-283-1600  
[cameron.aderhold@cypressequities.com](mailto:cameron.aderhold@cypressequities.com)

with a copy to:

Cypress Foothills, LP  
Attention: Brian Parro  
8343 Douglas Ave., Suite 200  
Dallas, Texas 75225  
Facsimile: 214-283-1600  
[brian.parro@cypressequities.com](mailto:brian.parro@cypressequities.com)

with a copy to:

Law of the Rockies  
Attention: Marcus J. Lock  
525 North Main Street  
Gunnison, Colorado 81230  
Facsimile: 970-641-1943  
[mlock@lawoftherockies.com](mailto:mlock@lawoftherockies.com)

Notices mailed in accordance with the above provisions shall be deemed to have been given on the third business day after mailing. Notices personally delivered shall be deemed to have been given upon delivery. Notices sent by facsimile shall be deemed to have been given at the time the transmission is received. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process.

**26.0 ENTIRE AGREEMENT.** Except as contained in the agreements described in Section 1.2, Related Agreements, this Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes any prior agreement or understanding relating to such subject matter, provided however that nothing herein modifies, or is intended to modify, or supersedes, or is intended to supersede, the Pre-Annexation Agreement or the Amended Pre-Annexation Agreement. Accordingly, both parties are not waiving any rights and remedies they may have under the Pre-Annexation Agreement or the Amended Pre-Annexation Agreement, and both parties expressly reserve all rights and remedies available under the Pre-Annexation Agreement or the Amended Pre-Annexation Agreement.

27.0 SEVERABILITY. It is understood and agreed by the parties hereto that, if any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, state or federal, the validity of the remaining portions or provisions hereof shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

28.0 MODIFICATION. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

29.0 BINDING AGREEMENT. This Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns.

30.0 GOVERNING LAW. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.

31.0 INCORPORATION OF EXHIBIT. The attached Exhibit is incorporated herein by reference: Exhibit A, Developer's Cost Estimate

Dated to be effective the 8th day of August, 2017.

TOWN OF CRESTED BUTTE, a Colorado home rule municipal corporation

By:

*Glenn Michel*  
Mayor Glenn Michel

ATTEST:

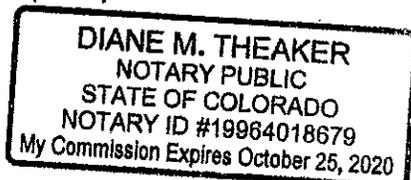
*Lynelle Stanford*  
Town Clerk Lynelle Stanford

8<sup>th</sup> The foregoing Development Improvements Agreement was acknowledged before me this 8 day of August, 2017, by Glenn Michel, Mayor, and Lynelle Stanford, Town Clerk, of the Town of Crested Butte, a Colorado home rule municipal corporation.

Witness my hand and seal.

My commission expires: 10-25-2020

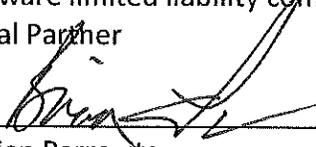
(SEAL)



*Diane M. Theaker*  
Notary Public

CYPRESS FOOTHILLS, L.P.,  
a Texas limited partnership

By: CYPRESS FOOTHILLS, G.P., L.L.C.,  
a Delaware limited liability company, its  
General Partner

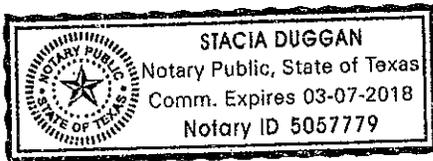
By:   
Brian Parro, its  
Chief Financial Officer  
and Vice President

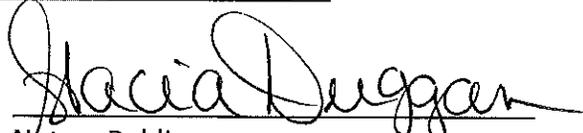
STATE OF TEXAS            )  
  )ss.  
COUNTY OF DALLAS        )

12/11 03/07 The foregoing Development Improvements Agreement was acknowledged before me this  
day of March, 2017, by Brian Parro, as Chief Financial Officer and Vice President of  
Cypress Foothills GP, LLC, which is the General Partner of Cypress Foothills, LP.

Witness my hand and official seal.

My commission expires 3-7-18



  
Notary Public

**SLATE RIVER DEVELOPMENT WORK WITHIN TOWN PROPERTY  
ENGINEER'S OPINION OF PROBABLE COST**

Town of Crested Butte 2 Year Warranty Items

Exhibit A

July 31st 2017 Revised Per Town Direction add Back in Fence, Landscape and Trail

Item/Description				Total Price \$
<b>Bonded In Town Items Total</b>				
Bonded In Town Items Total				\$536,403.50
<b>TOTAL</b>				<b>\$536,403.50</b>
<b>Pyramid Ave Road, CR 317 ROW to Bridge</b>				
Pyramid Ave. Road				\$252,200.00
<b>TOTAL</b>				<b>\$252,200.00</b>
<b>Water Distribution Lines (From Gunnison County DIA)</b>				
Water Distribution Lines				\$623,700.00
<b>TOTAL</b>				<b>\$623,700.00</b>
<b>Sewer Collection Lines (From Gunnison County DIA)</b>				
Sewer Collection Lines				\$548,198.00
<b>TOTAL</b>				<b>\$548,198.00</b>
<b>TOTAL</b>				<b>\$1,960,501.50</b>
<b>25% Two Year Warranty Amount</b>				<b>\$490,125.38</b>

<b>Total Performance Guarantee (100% in Town Bonded Items + 25% Two Year Warranty On All)</b>	<b>\$1,026,528.88</b>
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