

THREE SPRINGS DEVELOPMENT AGREEMENT

BETWEEN

CITY OF DURANGO, COLORADO

AND

GRVP, LLC



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- Exhibit B -- County Agreement
- Exhibit C -- 9-R Agreement
- Exhibit D -- Tap Purchase Agreement
- Exhibit E -- Public Facilities Matrix
- Exhibit F -- Schedule of Residential to Retail Obligations
- Exhibit G -- Schedule of Affordable and Attainable Housing Obligations
- Exhibit H -- Plat of Ancillary Uses of Dedicated Lands
- Exhibit I -- Developer Water Interests
- Exhibit J -- Schedule of Maintenance Responsibilities

THREE SPRINGS DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this 6th day of April, 2005, by and between the CITY OF DURANGO, a Colorado home-rule municipality (the “City”) and GRVP, LLC, a Colorado limited liability company (“GRVP” or the “Developer”). The City and GRVP are collectively referred to as “Parties.”

RECITALS

- A. **The Property.** Developer owns approximately 621 acres of land (the “Property”), which the City annexed and which is legally described as Tracts 3, 4, and 5 of the Three Springs Minor Subdivision Final Plat, County of La Plata, State of Colorado, filed for record on April 29, 2004, under Reception No. 883523 in the real property records of La Plata County, Colorado.
- B. **Grandview 1st Addition.** At the same time the City annexed the Property, the City also annexed an adjacent 60-acre parcel legally described as Tracts 1 and 2 of the Three Springs Minor Subdivision Final Plat filed for record on April 29, 2004, under Reception No. 883523 in the real property records of La Plata County, Colorado, and which, together with the Property, is known as the “Grandview 1st Addition.” A new hospital and associated medical office building (collectively “Regional Medical Center”) are being constructed on the 60-acre parcel. The Parties have also referred to the Three Springs Minor Subdivision Final Plat as “Three Springs, Village 1, Filing 1.”
- C. **The Project.** Developer desires to develop the Property as a master planned mixed-use community, commonly known as “Three Springs” (the “Project”). Developer contemplates that the Project will have a maximum of 2283 residential dwelling units, 300 lodging units, and 864,000 square feet of commercial and light industrial buildings. Additionally, Developer contemplates that the Project will include more than 130 acres of land designated for park use, more than 100 acres of open space, and approximately 40 acres of land dedicated for school purposes. The Project is consistent with general densities and land use designations for the Property as identified in the Grandview Area Plan, which is part of the City’s Comprehensive Plan.
- D. **Public Improvements.** The City and Developer previously entered into an *Annexation Agreement*, a copy of which is attached hereto as *Exhibit A*, whereby Developer, as a condition for annexation of the Grandview 1st Addition, committed to construct certain facilities and public improvements at substantial up-front cost. The City and Developer specifically agreed in the Annexation Agreement that the Developer’s obligations under the Annexation Agreement would constitute partial consideration for the rights granted to Developer under this Agreement.

- E. Conceptual Development Plan.** On January 21, 2004, the City approved Developer's Conceptual Development Plan for the Project, which was amended on February 15, 2005, contingent upon City approval of this Agreement. Developer's Conceptual Development Plan, together with any approved amendment thereto, is referred to in this Agreement as the "Conceptual Development Plan," which is incorporated herein by reference.
- F. Mutual Benefits.** Development of the Project in accordance with the Annexation Agreement, the Conceptual Development Plan and this Agreement will provide significant benefits to the Parties, including but not limited to the following:
1. Developer will be granted significantly increased densities and intensities of uses and a wider range of uses than would otherwise have been available without annexation of the Property, and Developer will benefit from the availability of reliable City water supplies and the delivery of City services to the Property.
 2. The City will benefit by the creation of a master planned community that will promote orderly growth in the City, by the Developer's construction of facilities and infrastructure improvements that will connect the City to the Grandview Area, by expanded revenue producing opportunities and employment, by additional affordable and attainable housing, by an array of community facilities, such as parks and trails, and by water rights dedications that will be provided to the City for its citizens.
 3. The community will also benefit from the relocation and construction of the Regional Medical Center in the Grandview Area, which would not have been possible without Developer's donation of land to the Regional Medical Center and Developer's commitments to construct public improvements or the City's annexation of the Grandview 1st Addition.
- G. CDOT Access Permit.** On or about March 16, 2004, the Colorado Department of Transportation ("CDOT") issued Access Permit No. 504023, which requires Developer to construct certain highway improvements needed to serve a portion of the Project, including without limitation a new, signalized intersection between U.S. Highway 160 and Three Springs Boulevard, and which grants Developer access to CDOT-regulated roadways needed to serve a portion of the Project. The CDOT Access Permit, as the same may be amended or supplemented, is referred to herein as the "CDOT Access Permit."
- H. County Agreement.** Prior to annexation, Developer made certain commitments to the Board of County Commissioners of La Plata County, Colorado ("County") related to mitigation of impacts resulting from development of the Project. Pursuant to that certain *County Agreement Three Springs – GRVP, LLC Development* dated October 25, 2004 ("County Agreement"), and a copy of which is attached hereto and incorporated herein as *Exhibit B*, the County and Developer

have agreed to mitigation measures associated with the impacts of the Project on the County.

- I. School District 9-R Agreement.** School District 9-R of Durango (“School District”), a Colorado public school district within which the Project is located, and Developer entered into a certain agreement dated February 28, 2005 (“9-R Agreement”), a copy of which is attached hereto and incorporated herein as *Exhibit C*, which addresses, among other things, Developer’s obligations to dedicate lands within the Project for school purposes in accordance with the Conceptual Development Plan. The 9-R Agreement is conditioned upon the City’s approval of this Agreement.
- J. South Durango Sanitation District Agreement.** The South Durango Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado, within which the Property is located, and Developer entered into a certain *Tap Purchase Agreement* dated April 16, 2004 (“Tap Purchase Agreement”), a copy of which is attached hereto and incorporated herein as *Exhibit D*, which addresses, among other things, the purchase of sewer taps and the reservation of sewer services needed to serve portions of the Project.
- K. 404 Permit.** On April 26, 2004, the U.S. Army Corps of Engineers issued a permit to Tierra Group, LLC (“Tierra”), the predecessor in interest to Developer, that addresses mitigation measures required for the Project under Section 404 of the Clean Water Act (“404 Permit”). Tierra assigned the 404 Permit to Developer on or about June 9, 2004.
- L. Cooperation.** The Parties further acknowledge that implementation of this Agreement will require substantial cooperation between the Parties.

AGREEMENT

In consideration of the mutual covenants herein contained, and other good and valuable considerations, including those mentioned in the Recitals, the Parties agree as follows:

DEFINITIONS

The following terms shall have the following meanings:

“**9-R Agreement**” – The agreement between Developer and the School District referred to in Recital I, a copy of which is attached as Exhibit C to this Agreement.

“**404 Permit**” – The permit issued by the U.S. Army Corps of Engineers to Tierra and assigned to Developer, which is referred to in Recital K.

“**AMI**” -- Area Median Income for La Plata County.

“Affordable Units” – Project residential units affordable to those families earning less than eighty percent (80%) of AMI.

“Agreement” -- This Development Agreement.

“Annexation Agreement” – The annexation agreement entered into between the Developer and the City with respect to annexation of the Grandview 1st Addition and attached as Exhibit A to this Agreement.

“Attainable Units” – Project residential units affordable to those families earning between eighty percent (80%) and one hundred twenty-five percent (125%) of AMI.

“CDOT” – Colorado Department of Transportation.

“CDOT Access Permit” – The access permit issued by CDOT for a portion of the Project and referred to in Recital G.

“City” – The City of Durango, a Colorado home rule municipality.

“Civic Facilities” – facilities owned by the City, school sites, and other City/Civic areas eligible to be served by the Raw Water System as more fully described in Section 6.08.

“Codes and Standards” – codes and standards proposed by Developer and approved by the City to be used in development of the Project, as more fully described in Sections 2.05 and 4.04.

“Conceptual Development Plan” – Developer’s Conceptual Development Plan for the Project approved on January 21, 2004, and amended on February 15, 2005, together with any additional approved amendments thereto.

“County” – The Board of Commissioners of La Plata County, Colorado.

“County Agreement” – The Agreement between Developer and the County referred to in Recital H, a copy of which is attached as Exhibit B to this Agreement.

“DRC” – The Project’s design review committee to be created in accordance with and for the purposes identified in Section 4.06, Section 9.14 and Article Eight.

“Density” or **“density”** – The number of units or the amount of square footage in a Phase as set forth in the Public Facilities Matrix or in a Village as set forth in Table 3.04.

“Design Guidelines” – The design guidelines promulgated by Developer and applied by the DRC as described in Sections 4.06 and 8.05.

“Developer” – GRVP, LLC, a Colorado limited liability company.

“Developer’s Facilities” -- Facilities owned by Developer eligible to be served by the Raw Water System as more fully set forth in Section 6.08.

“Fire and Law Enforcement Impact Fee” -- The square footage fire protection impact fee and the additional one-time fee described in Section 6.12 to be paid by Developer and used to fund capital improvements and equipment for fire protection and public safety needs in the Three Springs service area.

“Goff Drainage Master Plan” – The drainage master plan for the Project prepared by Goff Engineering and Surveying, Inc., dated July 3, 2003.

“Goff Water Master Plan” – The water master plan for the Project prepared by Goff Engineering and Surveying, Inc., dated July 3, 2003.

“Goff Wastewater Master Plan” – The wastewater master plan for the Project prepared by Goff Engineering and Surveying, Inc., dated July 3, 2003.

“Grandview 1st Addition – Tracts 1, 2, 3, 4, and 5 of the Three Springs Minor Subdivision Final Plat described in Recitals A and B.

“Grandview Fee” – a separate major street impact fee that may be established in the future for the Grandview Area as described in 10.08 F.

“GRVP” – GRVP, LLC.

“LUDC” – The City’s Land Use and Development Code, as it may be amended from time to time, application of which is referred to in Section 4.02 and other parts of this Agreement.

“light industrial” – a category of land use described in the LUDC; provided that, for purposes of this Agreement, such use shall have no significant impacts related to noise, air quality, odor or vibration on surrounding lands or improvements, and further provided that, associated outside storage areas shall be screened.

“open space” -- a category of land use referred to in Sections 5.07 and 5.08 of this Agreement . Except for other uses permitted by this Agreement or other uses subsequently approved by the City, open space is land in a natural state to be used by the public for passive recreational purposes as defined by the City and natural resource conservation.

“lodging units” -- units in a public establishment, such as a hotel or motel, available for lease to the public as overnight sleeping accommodations; provided that the duration of any lease for such units does not exceed thirty (30) consecutive days.

“Parties” – The City and GRVP, LLC, collectively.

“Phase” – One of two incremental stages of Project development. For purposes of this Agreement a “Phase” means the maximum number of residential units, lodging units, and commercial square footages authorized under this Agreement (subject to Developer’s compliance with this Agreement and planning review and approval) upon Developer’s completion of all tasks identified for each such respective Phase as more fully set forth in the Public Facilities Matrix. The term “Phase” does not mean geographic location.

“Planning Director” – The City’s Director of Planning and Community Development.

“Project” -- Developer’s master planned mixed-use community proposed for development on the Property pursuant to this Agreement.

“Project Facilities” – Developer’s Facilities and Civic Facilities collectively as more fully set forth in Section 6.08.A.

“Property” -- Developer’s 621 acres of land on which the Project is located and more fully described in Recital A.

“Public Facilities Matrix” – The Adequate Public Infrastructure Matrix attached as Exhibit E to this Agreement.

“Raw Water System” – a water system to be constructed for the delivery of untreated water as more fully described in Section 6.08.

“Regional Medical Center” – The new hospital and associated medical office building referred to in Recital B.

“School District” – School District 9-R of Durango, a Colorado public school district.

“Sustainable Community Program” -- The program to be created by Developer to foster conservation of energy and sustainability related to Project improvements as more fully described in Section 4.07.

“Tap Purchase Agreement” – The tap purchase agreement entered into between Developer and the South Durango Sanitation District, referred to in Recital J and attached as Exhibit D to this Agreement.

“Tierra” – Tierra Group, LLC, referred to in Recital K.

“Three Springs” -- Developer’s master planned mixed-use community proposed for development on the Property.

“Traditional Neighborhood Development” – a walkable, mixed-use design that incorporates aspects of traditional neighborhoods.

“Villages” – two geographical staging areas more fully described in Sections 2.02 and 3.04.

“Water Interests” – Developer’s water rights and water supply allocations set forth in Exhibit H to this Agreement to be transferred to the City in accordance with Section 5.11.

ARTICLE ONE -- Purposes

1.01. Purposes Identified. The Parties agree that the purposes of this Agreement include the following:

- A. High Quality Project.** To facilitate the development of a high-quality Project that will exhibit an exemplary level of planning, resource conservation, design, and community amenities, consistent with the Conceptual Development Plan, preliminary plans, final plans, plats, adopted codes and standards, and third party agreements referred to or incorporated herein by reference, subject to further refinements resulting from the City’s land-use review processes.
- B. Reasonable Assurances to Developer.** To provide Developer reasonable assurance of the scope of the Project that will be acceptable to the City and the City’s assurance that it will review future requests to develop the Project in good faith and expeditiously.
- C. Reasonable Assurances to City.** To provide the City assurance that the Property will be developed in accordance with the Conceptual Development Plan and in a manner that will mitigate adverse impacts of the Project on the citizens of the City and the County and have a positive fiscal impact on the City.
- D. Acknowledgement of Up-front Costs.** To acknowledge the substantial up-front costs expended and to be expended by Developer in furtherance of the Project and in the construction of public improvements associated with the Annexation Agreement and the Project, including but not limited to: the transfer of relevant parcels for construction of the Regional Medical Center, the upgrade of the intersection at U.S. Highway 160 and Three Springs Boulevard, the connection of Three Springs Boulevard to County Road 233, the construction of internal water, sewer, street, and storm drainage improvements, and the extension of off-site utilities to the Grandview Area.
- E. Dedication and Infrastructure Commitments.** To fix Developer’s commitments to reserve and dedicate property, to construct facilities, and to

provide services associated with the Project, including those improvements more fully set forth in the *Adequate Public Infrastructure Matrix* (“Public Facilities Matrix”) attached hereto and incorporated herein as *Exhibit E*.

- F. **Conditional Vesting.** To grant and create contractually vested rights as more fully set forth herein and as authorized by C.R.S. § 24-68-104(2), subject to Developer’s timely performance of its obligations hereunder, and subject to the City’s development review regulations, development standards, and future City legislative enactments, except as specifically exempted in the Agreement.

ARTICLE TWO– General Project Description

- 2.01. **Mixed Uses.** As reflected in the Conceptual Development Plan, the Project will include a mix of uses, including 2283 residential units, 300 lodging units, and 864,000 square feet of commercial and light industrial development. Developer anticipates that commercial development will feature retail, lodging, and office space, interspersed with residential components. Significant amounts of land shall be set aside for civic uses, including parks, recreation, open space and schools.
- 2.02. **Villages.** The Project will be developed in two geographical staging areas (“Villages”). Portions of each Village may be developed incrementally based upon corresponding utility and roadway extensions and based upon market conditions. The timing of overall development is anticipated to correspond generally to the sequential development of the two Villages.
 - A. **Village 1.** Village 1 shall be located in the southern half of the Project and will include the major village center with office and retail development, a school, pocket parks, two neighborhood parks, residential housing, drainage and storm water detention facilities, wetlands and open space dedications. The size of Village 1 is projected to be approximately 291 acres (exclusive of Regional Medical Center) and will connect to the Regional Medical Center.
 - B. **Village 2.** Village 2 shall encompass approximately 330 acres in the north portion of the Property and will contain a mixed-use neighborhood center, a variety of residential housing, a school, a community park, a third neighborhood park, and open space dedications.
- 2.03. **Duration of Build Out.** The Parties anticipate that the Project will be developed over the course of the next 40 years.
- 2.04. **Phases.** Development of the Project shall occur incrementally within two Phases.

- 2.05. Codes and Standards/City Assurance.** In consultation with the staff of the City, Developer has been developing proposed codes and standards (“Codes and Standards”) for the Project, which are fundamental in establishing a walkable, mixed-use design and a traditional neighborhood development (“Traditional Neighborhood Development”). The Codes and Standards are more fully described in Section 4.04 of this Agreement. Developer shall submit proposed Codes and Standards to the Planning Commission and City Council for approval prior to the submission of any proposed preliminary plans for the Project.
- 2.06. Developer’s Commitment.** Developer agrees to develop the Property as set forth in the Conceptual Development Plan and in conformity with approved Codes and Standards, other applicable development standards, and Developer’s obligations under this Agreement.. Except as otherwise provided in the Annexation Agreement and this Agreement, the timing of development shall be subject to Developer’s discretion, and development of the Property may be suspended if Developer determines that such development is not economically feasible based on market demand.

**ARTICLE THREE – Densities, Uses, Reallocations,
Incremental Development, and Product Mix**

- 3.01. Design Densities.** The Parties agree that the densities and uses contained in the Conceptual Development Plan and in Sections 3.04 and 3.05, below, are considered to be design densities that constitute the maximum allowed on the Project (unless otherwise expanded through acquisition of transferable development rights). The City agrees that Developer shall be entitled to the overall design densities and land uses depicted in the Conceptual Development Plan and in Sections 3.04 and 3.05, provided that Developer performs Developer’s obligations under this Agreement, and further provided that the improvements contemplated for both Phases have been satisfied as set forth in the Public Facilities Matrix.
- 3.02. Specific Densities.** The design densities for any Village or portion thereof may be reasonably modified by the City during the preliminary plan review process and differing specific densities assigned as necessary to comply with the Codes and Standards or applicable development standards as reasonably interpreted and applied by the City under this Agreement or other limitations imposed by governmental entities with applicable jurisdiction. Any reduction in design density, however, shall be subject to the Density/Reallocation provisions set forth in Section 3.05, below.
- 3.03. Variations in Open Space/Land Dedications.** Open Space/land dedication requirements set forth in the Conceptual Development Plan represent approximations and may vary by agreement of the City and Developer as a result of Village planning or preliminary plan review. Unless Project density exceeds the total densities set forth below in Table 3.04, the total open space/land dedication

requirements shall not exceed those prescribed for the Property in the Conceptual Development Plan.

3.04. Projected Village Units and Square Footages. The following table identifies the size of each Village and the total densities and uses anticipated for each Village.

Table 3.04

Village	Acres	Residential Units	Light Industrial GSF	Office Retail GSF	Lodging Units
1	291	1,183	135,000	600,000	300
2	330	1,100	24,000	105,000	0
Totals	621	2283	159,000	705,000	300

Light industrial uses in the Project shall be only those identified in the Codes and Standards and may be located only in Transects specifically identified for such uses. Of the 600,000 square feet of Office/Retail identified for Village 1, a minimum of 100,000 square feet shall be reserved for retail uses. Other requirements related to retail components of the Project are set forth in Section 3.07, below. Residential product mix requirements and projections are set forth in Section 3.08, below.

3.05. Density/Use Reallocations. The Parties recognize the need for some flexibility in the allocation of densities and uses within each Village and between Villages to respond to changing market conditions over the life of the development, and, accordingly, agree to the following density/use reallocation provisions.

- A. Total Project Density.** The total overall Project density and total square footages for both Villages combined, as shown on Table 3.04, shall be the Project maximums, except to the extent that densities may be permitted to increase from the acquisition of transferable development rights in conformity with procedures and standards enacted by the City in the future.
- B. Ten Percent Shifting Between Villages.** The City agrees to allow Developer, at Developer's discretion, to reallocate and transfer up to ten percent (10%) of the permissible residential units and non-residential gross square footage or lodging units between Villages; provided that the sending and receiving locations are within Transects (to be depicted and described in Codes and Standards) that permit the type of use or unit being transferred.
- C. Reallocation Notification.** If Developer has not previously notified the City of its proposed reallocations of densities/uses in a form acceptable to the City, Developer shall provide such notification at the time of submission of any final plat for a particular Village or portion thereof.
- D. Reallocations Requiring Additional Approval.** The following proposed reallocations shall require additional approvals, as more fully set forth below.

1. **Exceeding Ten Percent.** Any proposed reallocation that would transfer more than ten percent of the residential units or non-residential square footages or lodging units from one Village to another shall be deemed a Major Amendment of the Conceptual Development Plan, which must be approved by the City Council, following review and recommendation of the Planning Commission.
 2. **After Final Site Plan Approval.** Any proposed reallocation that would require a change in a final site plan approved by the City shall be subject to the procedures for amending final site plans established in the LUDC.
- 3.06. **Incremental Development.** The Parties anticipate that the Project will be developed incrementally. Prior to the satisfaction of all tasks set forth in the Public Facilities Matrix for a Phase, the City may condition approval of a preliminary plan for a portion of the Project upon the completion of improvements or public facilities reasonably required to meet the needs of that portion of the Project.
- 3.07. **Retail to Residential Product Mix.** The following limitations shall apply to the mix of retail development and residential development.
- A. **First Final Plat.** The first final plat for the Project (Three Springs Village 1, Filing 2) shall include a component of retail space that is no less than twenty thousand (20,000) square feet (exclusive of office space).
 - B. **Retail Minimums Prior to Phase 2.** Before Developer may obtain a building permit for any residential product identified in Phase 2 of the Public Facilities Matrix (Exhibit E), Developer shall first have constructed the full retail component for Phase 1 designated in the *Schedule of Residential to Retail Obligations* attached hereto and incorporated herein as *Exhibit F*.
- 3.08. **Residential Product Mix.** The Parties agree that at least twenty-five percent (25%) of the residential product shall consist of attached (multi-family) units. Under current market conditions, Developer anticipates that approximately fifty percent (50%) of the residential product shall consist of detached, single-family dwellings. Before Developer may obtain a building permit for Phase 2 development, Developer shall first have caused to be constructed at least one hundred fifty (150) attached (multi-family) units.

ARTICLE FOUR – Development Standards

- 4.01. **Intent.** It is the intent of the Parties that the Project be an exemplary development that fosters a sense of community and provides a safe, esthetically appealing, comfortable, and environmentally sensitive area to work and live.

- 4.02. Application of Existing City Standards.** The City's existing development standards, including those contained in the LUDC, as it may be amended from time to time, shall apply, except to the extent superseded or modified by this Agreement or through procedures authorized by this Agreement.
- 4.03. Fire Detection and Suppression.** Developer shall install fire detection and suppression systems in all residential, commercial and lodging units in accordance with standards set forth in the Durango City Code or in ordinances duly adopted by the City Council.
- 4.04. Content and Effect of Codes and Standards/City Assurance.** The following provisions of this section address the content and effect of the Codes and Standards submitted by Developer for City approval in accordance with Section 2.05.
- A. Content.** The proposed Codes and Standards shall include the following:
- 1. Transects Defined.** The proposed Codes and Standards shall include, among other things, a depiction of transects ("Transects"), which are geographical districts within each Village, and allowable residential units and commercial uses within each Transect.
 - 2. Additional Standards.** Additionally, the proposed Codes and Standards shall include without limitation: allowed lot sizes and lot line adjustment procedures, frontage requirements, setbacks, street and parking standards, building heights, design principles and landscape standards applicable to the Project, but will not include the Design Guidelines described in Section 4.06, which shall be established separately by the Developer and approved by the Planning Director in accordance with Section 9.14. The Codes and Standards may also include setback, screening and noise mitigation requirements for oil and gas exploration and development activities undertaken on the Property.
- B. City Consideration.** The Parties acknowledge that consideration and approval of the Codes and Standards by the City is a discretionary process and that the City has the right to require modification of the proposed Codes and Standards prior to their adoption. The City agrees to review the proposed Codes and Standards expeditiously and in good faith and to act reasonably in determining whether or not to approve the same.
- C. City Approval.** The Codes and Standards shall be subject to City approval, which shall be evidenced by a written resolution or ordinance of the City, which, together with the approved Codes and Standards, shall become incorporated as part of this Agreement.

D. Effect of Approval. Upon approval, the Codes and Standards shall supplement the other development standards contained in or incorporated by reference in this Agreement, and together they shall become the applicable standards for development of the Project. To the extent that the Codes and Standards or other provisions of this Agreement do not address specific requirements, regulations, standards or specifications associated with Project development, then the applicable requirements, regulations, standards or regulations shall be the City's otherwise applicable and then-existing requirements, regulations, standards, and specifications including those set forth in the LUDC.

4.05. Cultural Resources. Prior to initiation of any development of the Project, including excavation, Developer shall complete a cultural resources inventory and mitigation plan for such development to be reviewed and approved by the City as provided in Section 10-10-13 of Chapter 27 of the Durango City Code.

4.06. Design Guidelines. Developer shall promulgate design guidelines ("Design Guidelines), which shall address such matters as architectural and landscape design elements, integration and compatibility, while allowing for a diversity of design styles and materials, and which shall be applied by the Design Review Committee ("DRC") in accordance with internal governance mechanisms described more fully in Article Eight. Approval and modification of the Design Guidelines shall be governed by Section 9.14, below.

4.07. Energy Conservation and Sustainability. Developer shall establish, implement, and periodically assess a program designed to conserve energy and to promote sustainability in the design, construction and maintenance of facilities and improvements located in the Project ("Sustainable Community Program"). Developer's Sustainable Community Program shall be submitted to the City and shall be subject to City Council approval, which approval shall not be unreasonably withheld and shall be obtained prior to approval of Developer's first proposed final plat for the Project (Three Springs Village 1, Filing 2). The Sustainable Community Program will address a number of overall community items (transportation, neighborhood design, community education and awareness, recycling, storm water management, and common area landscape materials and maintenance), as well as the application of sustainability principles in the construction of individual buildings and residences. All single family detached residential units will be constructed in compliance with the Built Green Colorado Program or its equivalent. LEED standards or their equivalent will be utilized in the construction of a portion of commercial and civic buildings. Developer shall notify residents, potential builders, vendors and service providers of the Sustainable Community Program and will encourage and promote implementation of the same. Where practical, benchmarks will be established to measure participation and benefits to the community.

4.08. Water Management Program. As part of the Sustainable Community Program, Developer shall also establish a water management program for the Property with the goal of reducing the amount of water diverted and consumed by the Project. Water conservation measures shall include the requirement that all structures built within the Project be equipped with high efficiency showerheads, ultra low flow toilets, and low flow faucets and appliances. Outdoor water use shall be controlled through automated watering that shall take into account, time of day, time of year, soil moisture content, local precipitation and evapotranspiration data in assigning watering amounts and timing. Outdoor landscaping design shall be in accordance with the Codes and Standards and Project Design Guidelines and with other City landscaping requirements as modified from time to time and applicable to all future developments within the City.

4.09. Internal Road Design. Project internal road design is important to maintaining walkable communities and to Project design densities.

A. Design Objectives. Developer proposes utilizing a Traditional Neighborhood Development road and street system and design that will include narrower, pedestrian friendly streets interconnected through a grid or redundant connection pattern and that will be more fully described in the thoroughfare plan of the Codes and Standards. The design, which will be subject to City approval, will generally incorporate the recommended practices defined in the *Institute of Transportation Engineers (ITE) Traditional Neighborhood Development Street Design Guidelines* (June 1997), as amended or revised from time to time, including a traffic calming, pedestrian-friendly environment, social and walkable development, safe and functional access, and mitigation of traffic impacts on surrounding properties.

B. Density Affected. Project design densities have been based upon the City's consideration of a Traditional Neighborhood Development road system design, which deviates from typical City street design standards.

1. Good Faith Review. The City agrees to work reasonably and in good faith with the Developer to adopt mutually acceptable Traditional Neighborhood Development internal roadway and street standards to accommodate a Traditional Neighborhood Development roadway network as provided above.

2. Density Modification. In the event the City declines to approve a Traditional Neighborhood Development road system design, and to the extent that such refusal would result in a reduction of overall design densities, the City shall allow Developer to modify the Conceptual Development Plan so as to achieve the Project design densities authorized in Table 3.04, subject to Developer's compliance with all

other applicable City standards and procedures and the provisions of this Agreement.

4.10. Affordable/Attainable Housing. The City desires to improve its inventory of residential units that are financially available for rent or sale to residents who do not have high incomes.

- A. Affordable Units.** Developer agrees that no less than ten percent (10%) of all residential units built in conjunction with the Project shall be affordable to those families earning less than eighty percent (80%) of the Area Median Income (“AMI”) (“Affordable Units”).
- B. Attainable Units.** Developer further agrees that no less than an additional fifteen percent (15%) of all residential units built in conjunction with the Project shall be affordable by those families earning between eighty percent (80%) and one hundred twenty-five percent (125%) of AMI (“Attainable Units”).
- C. Rent or Sale.** Affordable Units and Attainable Units shall be made available for rent or sale at Developer’s sole discretion.
- D. Substitutions and Limitations.** Developer-created on-site or off-site down payment assistance, below market financing or cash-in-lieu mechanisms, or off-site development of Affordable Units or Attainable Units within the City’s service area, that achieve equivalent economic results shall be considered a reasonable and acceptable substitute for the Affordable Units and Attainable Units requirements within the Project on a unit for unit basis. At least fifty percent (50%) of Affordable and Attainable Units must be provided within the boundaries of the Project or on the neighboring sixty-acre campus of the Regional Medical Center.
- E. Documentation.** Developer shall submit descriptive documentation of any such substitutions to the City’s designated representative, and Developer and the City shall maintain an accurate record of the same.
- F. Affordable and Attainable Housing Mix.** The following additional limitations shall be applicable to the product mix related to Affordable and Attainable Units.
 - 1. Second Final Plat Percentages.** As reflected at the time of recording of Developer’s second final plat for the Project (Three Springs Village 1, Filing 3), the cumulative percentages of Affordable and Attainable Units within the first and second final plats for the Project and within the campus of the Regional Medical Center in relation to all residential units prescribed for such lands shall be at least ten (10%) Affordable Units and fifteen (15%) Attainable Units.

2. Minimums Prior to Phase 2. Before Developer may obtain a building permit for any residential product identified in Phase 2 of the Public Facilities Matrix (Exhibit E), Developer shall first have constructed (or have otherwise satisfied through substitution) the Affordable Housing and Attainable Housing components for Phase 1 as more fully set forth in the *Schedule of Affordable and Attainable Housing Obligations* attached hereto and incorporated herein as *Exhibit G*.

G. Deed Restrictions. Developer and the City hereby agree that, prior to the recording of Developer's second final plat for the Project, Developer and the City shall agree to the use, form and duration of deed restrictions or some other acceptable mechanism applicable to Affordable or Attainable Units, or some portion thereof, for the purpose of maintaining the Affordable or Attainable status of such units. Such agreement shall be reflected as an amendment to Exhibit G.

ARTICLE FIVE – Land and Water Dedications

5.01. Generally. The Parties recognize that, in order to achieve the mutual goals of the City and Developer in the development of an exemplary planned community, it is in the Parties' mutual best interests to provide for dedications of land for public purposes that exceed those otherwise required under existing law. In addition to land dedications by which Developer shall transfer title to the City or other public entities, the Conceptual Development Plan also contemplates retention of certain tracts by the Developer that will be designated for public uses. The benefits conferred upon Developer under this Agreement are provided, in part, in recognition of the Developer's commitment to make such dedications at no cost to the City.

5.02. Categories. The purposes of public land dedications to be made under this Agreement are categorized as follows: parks, open space, trails, school lands, water rights, street, storm water detention, utilities (including treated water system), safety, and civic uses.

5.03. Timing of Dedications. As a general matter, Developer shall make the dedications contemplated in this Agreement at the City's request in accordance with dedication procedures set forth in the LUDC. The timing of dedications of school lands, however, shall be in accordance with notices given by the School District under the terms of the 9-R Agreement.

5.04. Free of Liens or Debt. All dedications shall be conveyed to the City free of liens or debts; however, the Parties also recognize that title shall be subject to pre-existing reservations, exceptions, and encumbrances of record and easements to third parties.

5.05. Developer's Use of Dedicated Lands. With the prior written approval of the City staff, which approval shall not be unreasonably withheld, Developer may use a portion of dedicated lands for storm water detention facilities and for the installation, maintenance and replacement of utilities or other non-park facilities. A proposal that has a material adverse impact upon or interferes with the use of the dedicated lands for the primary purpose of the dedication may be denied. The *Plat of Ancillary Uses of Dedicated Lands*, a copy of which is attached hereto and incorporated herein as *Exhibit H*, identifies currently anticipated uses of dedicated lands by Developer or other parties. The Parties agree that use of the dedicated lands for the purposes identified in Exhibit H can be accommodated in a manner that will not have a material adverse impact upon or interfere with the use of the dedicated lands for the primary purpose of the dedications. In the event that the City staff denies Developer's request for such a use, Developer may appeal such City staff decision to the City Manager and to the City Council. Specific easements for such uses shall be delineated at the time of dedication.

5.06. Park Dedications. Developer agrees to make the following land dedications to the City for park purposes as depicted in the Conceptual Development Plan and applicable final plats.

A. Community Park. The Community Park land dedication shall be for approximately 75 acres located in the northeast portion of the Property.

1. Cooperation on Traffic. The City agrees to cooperate with Developer so that the City's use and planned activities at the Community Park do not unduly impair or diminish Developer's traffic capacity at the intersection of Three Springs Boulevard and U.S. Highway 160 as addressed in the CDOT Access Permit.

2. City to Build. The City shall be solely responsible for building the Community Park.

B. Neighborhood Parks. Developer shall build and dedicate three neighborhood parks to the City as depicted on the Conceptual Development Plan in a total acreage amount of approximately fifty-five (55) acres. The City shall approve the design of the neighborhood parks, and the neighborhood parks shall be built in accordance with City park standards.

1. Florida Canal Park. The Florida Canal Park, consisting of approximately 18 acres, shall be located in the north-central portion of the Project.

2. East-West Park. The East-West Park, consisting of approximately 12.4 acres, shall be located in the central portion of the Project.

- 3. Confluence Park.** The Confluence Park, consisting of approximately 24.8 acres, shall be located in the south-central portion of the Project.
- C. Retained Parks less than Five Acres.** Developer shall build and retain all park areas that are less than five (5) acres in size.
- 5.07. Open Space Dedications.** Developer agrees to dedicate approximately seventy-five (75) acres of land in the northwest and southern portions of the Property for open space purposes as depicted in the Conceptual Development Plan.
- A. Northwest.** One of the open space areas consists of approximately 40 acres located in the northwest portion of the Property.
- B. Southern.** The other open space area consists of approximately 35 acres located in the southern-central portion of the Property.
- 5.08. Retained/Designated Open Space.** In addition to the open space lands to be transferred to the City, the Conceptual Development Plan contemplates Developer's retention of approximately thirty-four (34) additional acres that will remain open space, including a buffer area located along the eastern boundary of the Property. The retained open space acreage will be used principally as corridors for trails within the Project and other uses approved by the City.
- 5.09. Trail Lands Dedications.** The Conceptual Development Plan contemplates a series of public trails within the Project and public trail connections to adjacent subdivisions and public lands. The precise location and acreage amounts associated with such trails shall be subject to further refinement in the planning review process. Developer agrees to dedicate to the City the lands identified in the planning review process as public trails. The City shall bear sole responsibility for building the trails on the Community Park, and Developer shall bear that responsibility on other Project lands.
- 5.10. School Lands.** Developer agrees to dedicate up to forty (40) acres of land to the City, as more fully set forth in the Conceptual Development Plan, for subsequent transfer from the City to the School District for school purposes, including the establishment of a middle school site and an elementary school site. The 9-R Agreement shall govern the terms of school land dedications.
- 5.11. Water Rights Dedications.** Developer agrees to dedicate, by quitclaim deed or share transfer, as appropriate, those water rights and water supply allocations more specifically described in the schedule of *Developer Water Interests*, attached hereto and incorporated herein as *Exhibit I* ("Water Interests").
- A. Developer's Use Following Transfer.** Transfer of the Water Interests to the City shall not preclude the use of Water Interests by Developer to

support Project environmental, irrigation and agricultural uses, prior to the operation of the Raw Water System described in Section 6.08.

- B. Payment of Fees and Assessments.** The legal owner of Water Interests shall be responsible for payment of any annual fees and assessments for the Water Interests when payment is due.
- C. Cooperation in Transfers.** The Parties recognize that ultimate use of the Water Interests for the maximum benefit of the Parties may depend upon a variety of factors, including such things as historic consumption, the status of lands to be served, and the purposes for use. The Parties agree to cooperate in analyzing alternative ways to maximize efficient and beneficial use of the Water Interests.
- D. City Responsible for Changes.** The City, at the City's sole cost, agrees to pursue, in cooperation with Developer, the reclassification of Project lands with the Bureau of Reclamation and the Florida Water Conservancy District and changes of use proceedings or other related proceedings in the District Court, Water Division 7, needed for use of the Water Interests as contemplated by this Agreement.
- E. Developer's Information.** Developer shall provide the City, at Developer's cost, all information and records currently available to Developer that may be useful in supporting the City's legal or administrative proceedings regarding the Water Interests.
- F. Delayed Transfer of Florida Project Water.** The City acknowledges that the transfer of Florida Project water to a new landowner or to lands not currently allocated such water is a matter within the discretion of the Florida Water Conservancy District and that the Bureau of Reclamation may limit application of Florida Project water to lands classified by the Bureau of Reclamation as irrigable/arable land. To avoid potential loss of Florida Project water, Developer shall not be required to transfer the Florida Project water portions of the Water Interests until the City has reached agreement with the Florida Water Conservancy District regarding such transfers and until lands on which the City desires to apply Florida Project water have been classified as lands eligible to receive Florida Project water.

5.12. Street, Storm Water Detention, and other Public Improvement Dedications. Developer agrees to dedicate to the City all public streets and alleys, storm water detention and management facilities, and other public improvements designated for dedication to the City, and the City agrees to accept such dedications, as reflected in approved final site plans and final plats.

5.13. Utility Dedications. Developer agrees to dedicate to the City and the City agrees to accept dedications of all treated water facilities, as reflected in approved final site

plans and final plats. Developer agrees to dedicate to the South Durango Sanitation District, or its successor, all facilities designated on approved final site plans and final plats as public sewer facilities. Developer also agrees to dedicate to other utility service providers those utility lines and facilities designated on approved final site plans and final plats for utility dedication.

- 5.14. Safety Purpose Dedications or Commitments.** The Parties agree that facilities for police and fire protection shall be required to meet the needs of Three Springs, particularly as development progresses. Developer agrees to dedicate to the City for police and fire protection purposes a site approximately 1.9 acres in size, bordered on the west by the western boundary of the Property and located adjacent to and south of the Regional Medical Center and north of Traverse Road.
- 5.15. Public Transit Facilities.** Developer shall dedicate land to the City, the size and location of which shall be acceptable to the City and addressed in final plats, for up to two (2) public transit stops with bus shelters.
- 5.16. Civic Use Dedications.** Developer agrees to dedicate up to five (5) acres of land in one or more sites for civic purposes approved by the City, including, for example, a branch library and including the 1.9 acre site needed for police and fire protection facilities, and the sites for public transit facilities described above.

ARTICLE SIX – Infrastructure/Facility Improvements

- 6.01. Generally.** This Article describes the infrastructure and facilities to be constructed by Developer or the City, as applicable, with respect to the Project. Major categories of improvements include those related to: traffic and transportation, water supply and storage facilities, raw water system, wastewater treatment and collection, drainage and storm water, utilities, and parks and trails.
- 6.02. Engineering Standards.** Except as specifically provided in this Agreement, in the Codes and Standards, or in an applicable approved final site plan, the installation of all infrastructure shall be undertaken according to the specifications, standards, and engineering practices regularly applied by the City to such improvements within the City as they exist on the date on which Developer submits a final plat or final site plan to the City for the development of the applicable increment of the Project.
- 6.03. Inspections.** The City's inspection procedures as reflected in the City Code or other written policies, as amended from time to time, shall apply to the inspection of improvements or facilities constructed under this Agreement.
- 6.04. Guarantees.** The performance guarantee and release procedures of the City Code shall apply to City improvements constructed for and accepted by the City under this Agreement. The repair and replacement of improvements to be provided by Developer under this Agreement shall be undertaken by Developer in accordance

with the City Code, the Annexation Agreement, and applicable public improvement agreements.

- 6.05. Financing/Special District.** Developer anticipates requesting the City to approve formation of a metropolitan district or special governmental improvement district pursuant to Titles 31 and 32, Colorado Revised Statutes, to assist in financing park, trail, landscaping and recreational improvements and facilities and operation and maintenance thereof required of Developer by this Agreement and for such other purposes as may be approved by the City Council. The City agrees to consider such request in good faith and to not unreasonably withhold approval of the same.

The City agrees that it will not include or consent to the inclusion of the Property in any special or improvement district without the Developer's express written consent during the term of this Agreement; provided, however, the Parties acknowledge that the Durango Fire & Rescue Authority may, at some time in the future, seek to convert to a special statutory district, and, should this occur, the Parties acknowledge that Developer would desire that the Property be included within such district. Should a fire protection district be formed which includes all or a portion of the Property, the Parties agree to review the issue of payment of impact fees for fire protection and emergency services to assure that the continued collection of such fees from the Property remains equitable.

- 6.06. Transportation Improvements.** The Project will generate a substantial amount of traffic that will necessitate a variety of on-site and off-site transportation facility improvements that are described more fully below.

- A. County Agreement.** Developer shall make the improvements it is required to provide under the terms of the County Agreement, including the following:

- 1. County Road 235.** The upgrade of County Road 235 so as to provide secondary access to the Project. In the event that secondary access for Phase 2 of the Project cannot be reasonably achieved via County Road 235 or via an alternative route acceptable to the City, Developer shall be permitted to utilize the secondary access route previously approved by the County for the former Artesian Valley development.
- 2. Reconstruction County Road 233.** The reconstruction of a portion of County Road 233 a distance of seven hundredths (0.07) of a mile north of the existing intersection of U.S. Highway 160 and County Road 233.
- 3. Upgrade of County Roads 234/235 Intersection.** The upgrading of the intersection of County Roads 234 and 235.

- B. CDOT Access Permit.** Developer shall make the improvements it is required to make under the CDOT Access Permit, including the following:

1. **Developer's Facilities.** Constructed wetlands, parks less than five (5) acres, streetscapes/monuments, interim agricultural lands, and other areas required by the City to be irrigated ("Developer's Facilities").
 2. **City/Civic Facilities.** City parks greater than five (5) acres, school sites, and other City/Civic areas within or outside of the Project that would benefit from use of untreated water ("Civic Facilities").
 3. **Project Facilities Defined.** Developer's Facilities and Civic Facilities are collectively referred to as "Project Facilities."
- B. Water Interests.** The Parties intend that the Water Interests dedicated by Developer to the City shall be the source of water for the Raw Water System. If the City develops and constructs the Raw Water System, the City agrees to provide untreated water from the Water Interests, if and when it is available from the Florida River and the Florida Project, via the Raw Water System to serve the Project Facilities.
- C. Master Plan.** The City and Developer shall work cooperatively to complete a master plan for the Raw Water System with a target date of January 1, 2006, in order to ensure proper timing, phasing and alignment of the System to serve Project Facilities and implementation of a coordinated schedule for the System's construction.
- D. Raw Water Charges.** Upon completion of the Raw Water System, Developer, the Project property owner's association, or future metropolitan district or special governmental improvement district, as applicable, shall become a customer of the City for the raw water delivered to Developer's Facilities through the Raw Water System. The City shall be permitted to charge Developer, or any other users of the Raw Water System, City fees for operation, maintenance and replacement costs of the Raw Water System based on the amount of water delivered to such user through the Raw Water System, but shall not be permitted to charge plant investment fees or any other fees designed to recover capital costs for the Raw Water System or acquisition of the Water Interests.
- E. Developer's Option.** Developer, at its option, may construct specific portions of the Raw Water System in order to meet Project deadlines, and the City shall reimburse Developer for the reasonable costs of constructing the improvements that the City and Developer agree are needed, as more fully set forth in a Public Improvements Agreement to be entered into at the time of approval of the applicable Final Plat.
- F. 404 Permit Modifications.** The City shall be responsible for amending Developer's existing 404 Permit and providing any mitigation, in accordance with U.S. Army Corps of Engineers regulations, required to

offset impacts to the waters of the United States resulting from the City's development of the Raw Water System.

- G. **Reversion of Water Interests.** Should the Raw Water System not be operational by June 2014, the City shall reconvey the Water Interests back to the Developer or Developer's successor, at Developer's option.

6.09. Wastewater Treatment and Collection. Developer shall have sole responsibility to secure expansions and upgrading of the treatment facilities and collection systems of the South Durango Sanitation District needed to serve the Project, including all school and park sites, as set forth in the Wastewater Master Plan prepared by Goff Engineering and Surveying, Inc., dated July 3, 2003 ("Goff Wastewater Master Plan"), and in the Tap Purchase Agreement. Developer shall provide satisfactory assurances of the adequacy of such facilities in conjunction with the planning review process.

6.10 Drainage and Storm Water. The Project shall require a major storm water management system to handle drainage from the Project as set forth in the Drainage Master Plan prepared by Goff Engineering and Surveying, Inc., dated July 3, 2003 ("Goff Drainage Master Plan").

- A. **"Gold Medal Trout Water."** Because the Animas River in the vicinity of the Project is recognized as high-quality "Gold Medal Trout Water," Developer shall treat and/or control all storm water from the Project that may flow into wetlands in the Project vicinity or into the Animas River. Runoff generated by development of the Property shall be intercepted and treated for water quality as required by City ordinances or regulations.
- B. **Storm Water Master Plan.** Developer shall prepare and submit for the City's approval a Storm Water Master Plan for construction activities for each portion of the Property submitted to the City for final site plan review.
- C. **Storm Water Improvements.** Developer shall be responsible for constructing the following storm water management, drainage, and erosion-control facilities:
 1. **Run-off Detention Facilities.** Detention facilities to control run-off from the Property so that storm-generated flows will be discharged from the detention facilities at rates similar to historic discharge conditions.
 2. **Conveyance Systems.** Conveyance systems necessary to convey storm water from sites throughout the Project to approved detention facilities.
 3. **Treatment Facilities.** Storm water treatment facilities as required to meet applicable City, State, and Federal water quality requirements.

- 6.11. Parks, Trails, and Streetscapes.** The Parties hereby allocate the responsibility to improve or construct parks, trails and streetscapes as follows.
- A. Park Improvements.** Developer shall be responsible for constructing park improvements associated with the Neighborhood Parks and all other parks less than five (5) acres in size in accordance with requirements developed and approved in the City’s planning review process. The City shall be responsible for all park improvements related to the Community Park. The City shall be responsible for amending Developer’s existing 404 Permit and providing any mitigation, in accordance with U.S. Army Corps of Engineers regulations, required to offset impacts to the waters of the United States resulting from the City’s development of the Community Park.
 - B. Trail Construction.** The City shall be responsible for construction of all trails within the Community Park, and Developer shall be responsible for construction of all other trails on Project lands, as depicted on the Conceptual Development Plan and approved final site plans. All such designated trails shall be constructed to City standards.
 - C. Streetscapes.** Developer shall also be responsible for construction of all streetscapes and landscaped areas and associated lighting as reflected in any approved final plan.

6.12. Fire and Law Enforcement Impact Fee; Rate, Escalation, and Purpose. Prior to the issuance of each building permit for any building improvement within the Project, the building permit applicant shall remit to the City a fire protection impact fee, at the base rate of \$0.465 per square foot of gross building area covered by that building permit. Said fee shall escalate three percent (3%) per year, with the first year beginning on the date of the issuance of the first building permit for the Project. Additionally, Developer agrees to pay to the City the sum of eight hundred thousand dollars (\$800,000) prior to the issuance of the first building permit for the Project, which, together with the fire protection impact fee set forth above in this Section (collectively “Fire and Law Enforcement Impact Fee”), is intended to and shall be deemed to satisfy Developer’s obligation or duty to mitigate current and future Project impacts in relation to fire protection and law enforcement needs. The City shall account separately for revenues collected from the Fire and Law Enforcement Impact Fee, which revenues shall be used to fund capital improvements and equipment for public safety and fire protection in the Three Springs service area, including, but not limited to, improvements to and equipment primarily located at Stations 1, 5 and 7.

ARTICLE SEVEN – Maintenance Responsibilities

7.01. Prior to Acceptance. Developer shall be responsible for maintenance of all Project improvements to be constructed by Developer under this Agreement, the Annexation Agreement, the Conceptual Development Plan, or subsequent planning

documents, prior to acceptance of the same by the City. All Project improvements shall comply with applicable design or construction standards.

- 7.02. Following Acceptance.** Following acceptance of individual improvements identified on the *Schedule of Maintenance Responsibilities*, attached hereto and incorporated herein as *Exhibit J*, each Party shall assume its respective maintenance responsibilities for those Project improvements, as set forth in Exhibit J.
- 7.03. Developer's Successors.** Developer's maintenance responsibilities may be delegated and assigned to a Project property owners association in accordance with instruments acceptable in form to the City Attorney. Subject to the City's prior approval (see Section 6.05), Developer's specific maintenance responsibilities for park, trail, landscaping and recreational improvements and facilities may be delegated to a metropolitan district or special governmental improvement district formed for that purpose.

ARTICLE EIGHT – Internal Governance and Application of Design Standards

- 8.01. Internal Governance.** Developer shall be responsible for the creation of a private internal governance system for the Project to administer those elements of the Codes and Standards not administered by the City, to enforce covenants, conditions, and restrictions, maintenance, and design review. Subject to any limitations contained in this Agreement and upon approval by the City, internal governance may include individually or in combination: property owners associations, special governmental improvement districts, or metropolitan districts.
- 8.02. Design Review Committee.** Developer's internal governance system shall include creation of the DRC.
- 8.03. DRC Composition.** Among other potential members, the DRC may include: the general manager of Three Springs, the planning and design manager of Three Springs, an outside architect, a member of the City's planning staff, and a Three Springs property owner (once property has been sold).
- 8.04. Applications.** Any person or entity, including the City, proposing to engage in building or development activity within the Project (including without limitation: residential, civic, or commercial building, landscaping, signage, parks, trails, open space improvements, visible utility construction, drainage, detention and storm water facilities construction, and streetscaping) shall be required to submit an application to conduct such activity to the DRC in accordance with submittal requirements. The DRC shall have the authority to require the submittal of site plans, landscape plans, architectural design plans, exterior material specifications, color palettes, and any other information deemed necessary for proper review.

- 8.05. Timely Review.** The DRC shall review all such applications in relation to the Design Guidelines in a timely manner in accordance with established schedules.
- 8.06. Approval Required.** Except as otherwise provided in Section 8.07 or as otherwise permitted by law, no construction or development activity shall be permitted to proceed within the Project until the application for such activity has been approved by the DRC.
- 8.07. City Improvements.** The City staff shall submit all plans for City improvements within the Project to the DRC, which shall in a timely manner make findings or recommendations regarding the consistency of such plans with the Design Guidelines. In the event that the DRC determines that such a plan deviates materially from the Design Guidelines, the DRC shall so notify the City staff in writing. If the City staff disagrees with such a finding or otherwise wishes to proceed with the City improvements without conforming to the DRC's recommendations, the City staff shall first submit the matter to the City Council. The DRC shall be permitted to attend such meeting and present its position to the City Council, whose decision on the matter shall be final.
- 8.08. Enforcement.** Private enforcement mechanisms, including judicial actions, shall be established that authorize the removal of structures, facilities or improvements by Developer or its successors that do not comply with the DRC approval process.

ARTICLE NINE – Administrative Process

- 9.01. Administrative Matters.** This Article addresses certain administrative matters related to Project planning and the effect of certain approvals, the processes for amending this Agreement and the Conceptual Development Plan and related matters and provides for periodic review of this Agreement.
- 9.02. Developer's Intentions for Village Development.** The Developer intends to submit one preliminary plan application for the entire Village 1, to be followed by three sequential filings for final plat approval collectively encompassing all lands within the approved Village 1 preliminary plan area. Similarly, Developer intends to submit one preliminary plan application for the entire Village 2, to be followed by three sequential filings for final plat approval collectively encompassing all lands within the approved Village 2 preliminary plan area.
- 9.03. Duration of Preliminary Plan Approval.** Preliminary plans for the Project shall be initially valid and effective for a period of three (3) years following the date of approval by the City Council, but their validity and effectiveness shall be subject to extensions as set forth in this Section 9.03.
- A. Approval of Final Plats.** Upon approval of the first final plat filing submitted by Developer within the three (3) year period of validity of an

approved preliminary plan, the validity and effectiveness of that preliminary plan shall be automatically extended for an additional three (3) year period beyond the original date of expiration of that preliminary plan. Similarly, the approval of the second final plat filing submitted within the extended period of validity for such preliminary plan shall automatically extend the validity and effectiveness of the preliminary plan for that Village by an additional three (3) year period from the applicable anniversary date of expiration of that preliminary plan.

- B. One-time Two Year Extension per Village.** As to each Village, Developer shall also have a one-time option to extend the validity and effectiveness of that Village's approved preliminary plan, without City approval, for a period of two (2) years; provided that, Developer shall notify the City in writing of its exercise of such option prior to the expiration of the applicable three-year period of effectiveness of that preliminary plan.
- C. Total Maximum Period.** Accordingly, the potential maximum time period for an approved preliminary plan to remain valid and effective, without resubmission and without the issuance of additional City preliminary plan approval, may be eleven (11) years, i.e., (i) initial 3 years, (ii) plus 3 years upon approval of first final plat, (iii) plus 3 years upon approval of second final plat, and (iv) plus 2 year optional extension.
- D. Timely Filing; Tolling.** Should Developer fail to submit a final plat filing to the City, or fail to notify the City of the exercise of a one-time extension of a Village preliminary plan, within the period of initial or extended validity of such preliminary plan, such preliminary plan shall no longer be considered as valid or effective. The timely filing of a final plat application prior to the expiration of the validity of an applicable preliminary plan shall toll the expiration of validity of such plan during the period that such final plat filing is being processed by the City. A final plat filing shall be deemed complete if submitted in good faith as a complete application even though the Planning Director may request additional information from Developer or the City may require amendment to or impose conditions upon approval of the final plat filing.
- E. Subsequent Extensions.** Developer may submit written requests to the Planning Director to otherwise extend the validity of a preliminary plan, and the Planning Director shall be authorized, but not obligated, to extend the validity of a preliminary plan pursuant to a written notice of extension; provided that Developer's application for such a request has been timely filed and Developer has demonstrated diligence and progress in development or has encountered unforeseen delays due to changes in market forces or other changed circumstances; and the Planning Director concludes that the granting of such extension is appropriate and in the best interests of the City.

- 9.04. Amending the Agreement.** Proposed amendments of this Agreement shall be considered and may be approved by a majority of members of the City Council present at a meeting at which a quorum is present. Any amendment of this Agreement shall also require the consent of the Developer.
- 9.05. Expansion of Agreement.** Developer may request the City to amend this Agreement from time to time to include additional property designated by Developer. Should the City, in its discretion, approve such an amendment, the additional property shall be subject to and benefit from all applicable provisions of this Agreement.
- 9.06. Conceptual Development Plan Amendments.** The Parties recognize that amendments to the Conceptual Development Plan may be necessary from time to time to reflect changes in market conditions or development financing. Conceptual Development Plan amendments shall be classified as Major Amendments or Minor Amendments.
- 9.07. Major Conceptual Development Plan Amendments.** Major Amendments are those that materially affect a basic element of the Conceptual Development Plan, including the following:
- A. Density Increases.** Any increase in the total maximum permitted residential units or non-residential square footages for the entire Project, except to the extent that such increases result from the acquisition of transferable development rights in conformity with procedures enacted by the City in the future.
 - B. Decreases in Dedications.** Any decrease of at least ten percent (10%) of the amount of land to be reserved or dedicated for public use, open space, or recreation within the Project.
 - C. Reallocations Exceeding Limits.** A reallocation of density or square footage among Villages that exceeds the ten percent (10%) Reallocation permitted under Section 3.05.
 - D. Major Circulation Modifications.** A major modification of the circulation patterns between Villages.
 - E. Transect Boundaries.** Any major change in the location of a transect boundary as depicted in the Conceptual Development Plan, except as may be provided in the Codes and Standards for Transect interface areas.
 - F. Major Reconfigurations.** Major reconfiguration of a development parcel that would move the boundary of such parcel more than five hundred feet (500 ft.) from the boundary depicted in the Conceptual Development Plan.

G. Other Major Modifications. Other major modifications resulting from the elimination of key project features, including without limitation, village features, walkable neighborhoods, major street connections or major trail segments. Notwithstanding the foregoing, a proposal by Developer to reduce the number of internal connections among neighborhoods from three (3) to two (2), provided that such reduction still permits associated traffic counts to be handled in a reasonable fashion, or to relocate the elementary school site shall not be considered Major Amendments of the Conceptual Development Plan.

9.08. Minor Conceptual Development Plan Amendments. Unless the modification or reconfiguration is listed as a Major Amendment in Section 9.07, above, there shall be an initial presumption that such modification is a minor modification or reconfiguration. Minor Amendments are those that do not materially alter the overall characteristics of the Project and do not create significant adverse impacts on adjacent uses, facilities or public services. Minor Amendments of the Conceptual Development Plan include without limitation:

- A. Minor Reconfigurations.** Minor reconfigurations of a development parcel or Transect boundary within a Village.
- B. Minor Internal Circulation Modification.** Minor modifications of the internal circulation system, including: realignment of a street, trail, or other pedestrian connection.
- C. Other Minor Modifications.** Minor modifications or reconfigurations of drainage patterns, retention facilities, dedicated parcels, street patterns, or minor amendments of final plans as described in the LUDC, Section 6-5-7, provided that such modifications do not have a material adverse impact on the Project and so long as such modifications do not result in unreasonable connectivity between Villages or inability to handle associated traffic counts in a reasonable fashion.

9.09. Refinements of Conceptual Development Plan. Reallocations authorized in Section 3.05 and minor adjustments to the location and definition of streets, alleys, individual lots, and blocks, shall not be considered as amendments to the Conceptual Development Plan, but rather as refinements that may be considered as a matter of course in the review of preliminary plans.

9.10. Major Amendment Procedures and Decision Criteria. Developer may apply for Major Amendments, which shall be reviewed by the City Council following the review, recommendation and advice of the Planning Commission, which shall be considered as quasi-judicial proceedings. The City may approve a Major Amendment to the Conceptual Development Plan in its reasonable discretion for any of the following reasons:

- A. **Changed Conditions.** Demonstrable changes in area property market conditions since approval of the Conceptual Development Plan.
- B. **Changes in City Regulations.** Changes in City-adopted plans, policies or regulations.
- C. **Unforeseeable Condition.** Changes in conditions that were not reasonably foreseeable at the time of approval of the Conceptual Development Plan.
- D. **Similar Situations.** Conditions exist similar to those relied upon by the City in approving major amendments to other PD projects in the City.
- E. **Justifiable.** The justification for the amendment is reasonable and in the best interests of the City and successful completion of the Project.

9.11. Minor Amendment Procedures. All Minor Amendments to the Conceptual Development Plan shall be reviewed and approved or denied by the Planning Director after consultation with other City departments, as appropriate, and the City Manager. If the Planning Director and Developer cannot reach agreement on a proposed Minor Amendment, the Planning Director or Developer may request that the Planning Commission consider and decide such application. Either the Planning Director or Developer may appeal an adverse decision of the Planning Commission to the City Council.

9.12. Preliminary Plan and Final Site Plan Amendments. Amendments to any preliminary plan or final site plan shall be submitted and considered for approval in accordance with processes established in the LUDC, unless the proposed amendment constitutes a Major Amendment to the Conceptual Development Plan, which must be reviewed in accordance with the procedures set forth in Section 9.10 above.

9.13. Periodic Review of Agreement. At the request of the Planning Commission, the Planning Director shall submit an oral or written report to the Planning Commission summarizing progress during the previous year in developing the Project in accord with the approved Conceptual Development Plan. If the Planning Commission requests, Developer shall appear at the meeting at which the Planning Director's report is submitted and shall be available to discuss the Project's progress. Additionally, at least once every five (5) years following execution of this Agreement, the City Council may request and Developer shall attend a meeting to discuss the Project and any issues that may have arisen with the operation of this Agreement.

9.14. Design Guidelines Procedures. Prior to approval of Developer's first final plat for the Project (Three Springs Village 1, Filing 2), Developer shall submit the initial Design Guidelines to the Planning Director for review and approval, which

approval shall not be unreasonably delayed or withheld. The Design Guidelines may be subsequently amended or supplemented by the Developer; provided that any amendment that results in a major alteration of the design principles applicable to the Project shall be subject to review and approval by the Planning Director. Minor amendments or supplements of the Design Guidelines shall be effective within ten (10) days of submission to the Planning Director unless the Planning Director notifies the Developer that the changes are major in character, in which event such modifications shall not become effective until approved by the Planning Director.

ARTICLE TEN – Vesting, Future Enactments, Fees, and Exemptions

- 10.01. Development Agreement.** This Agreement is a “development agreement” as contemplated by C.R.S. § 24-68-104(2).
- 10.02. Conditional Vesting.** Except as otherwise provided or conditioned in this Article Ten and subject to the condition of Developer’s completion of the enumerated tasks set forth in the Public Facilities Matrix and Developer’s material compliance with the remaining provisions of this Agreement, Developer is hereby conditionally vested with the right to construct and develop the residential units, commercial square footage and lodging units listed in the Public Facilities Matrix in the sequence and as more fully described below in Section 10.03, and no additional conditions, other than those contained or authorized in this Agreement, may be added or supplemented by the City that would in any manner serve to substantially diminish or impair Developer’s conditionally vested rights hereunder. During the term of this Agreement, the City agrees not to take any action, including without limitation the City Council’s approval of an initiated measure, that would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the Project, except as set forth herein or as authorized by C.R.S. § 24-68-105, and except as provided in C.R.S. § 24-68-104(2) as implemented in accordance with Article VII of Chapter 27 of the Durango City Code.
- 10.03 Relationship to Public Facilities Matrix and Duration of Vesting.** The Public Facilities Matrix divides the Project into Phase 1 and Phase 2 and lists certain tasks associated with each Phase. Upon “satisfaction” of all tasks listed for Phase 1, Developer’s right to construct and develop all residential units, commercial square footage and lodging units listed under Phase 1 shall become fully vested for a period of twenty (20) years from the date of such satisfaction of Phase 1 tasks (except as said period may be extended during a moratorium by operation of Section 10.10), subject only to Developer’s material compliance with the remainder of Developer’s obligations and the City’s rights under this Agreement. Upon “satisfaction” of all tasks listed for Phase 2, Developer’s right to construct and develop all residential units, commercial square footage and lodging units listed under Phase 2 shall become fully vested for a period of twenty (20) years from the

date of such satisfaction of Phase 2 tasks (except as said period may be extended during a moratorium by operation of Section 10.10), subject only to Developer's material compliance with the remainder of Developer's obligations and the City's rights under this Agreement. Except as provided in Section 10.10, no period of vested rights for either Phase shall exceed twenty (20) years, and no vested period shall extend beyond a date forty (40) years from the date of this Agreement. For purposes of this Article Ten and the Public Facilities Matrix, the term "satisfaction" shall mean: (i) the construction, inspection, and acceptance by the City of those improvements to be transferred to the City as reflected in the Public Facilities Matrix; and (ii) the agreement or irrevocable commitment on the part of Developer to construct, fund or guaranty the funding of the construction of those improvements to be transferred to other entities as designated on the Public Facilities Matrix.

10.04. Future City Enactments. Except as expressly set forth in this Agreement, the City reserves the right in the future to enact and apply ordinances or regulations to the Project and Project lands that are necessary to comply with the lawful mandates of superior authorities or, are promulgated to protect the health, safety, and general welfare of the public and are applicable on a City-wide basis or to all similarly situated property (e.g., large retail establishments or multifamily dwellings), even though such ordinances and regulations may conflict with or be more stringent than any Codes and Standards, existing City laws or regulations applicable to the Project or standards or improvements approved by the City in this Agreement.

10.05. Existing City Fees. Unless otherwise expressly provided in this Agreement, Developer shall be required to pay in a timely manner all routine, generally applicable application, processing, building permit and similar development fees.

10.06. Future City Fees and Dedication Requirements. Additionally, except as otherwise provided in this Agreement, the City reserves the right to impose impact fees applicable on a City-wide basis or generally applicable to other properties in the Grandview Area. In considering whether and how such impact fees should be assessed against the Developer or the Property, however, the City shall also reasonably consider the extent to which Developer has already borne or has already committed to bear the costs associated with impacts from the Project through compliance with the Annexation Agreement, the County Agreement, the Public Facilities Matrix, the 9-R Agreement and other provisions of this Agreement, and the City shall not impose upon Developer or the Property such impact fees to the extent that Developer has already paid its fair share of impact costs or has already established an alternative means for addressing payment of the same as contemplated in this Agreement and as set forth in Section 10.07 below.

10.07. Express Exemptions. The City specifically recognizes that Developer's commitments under this Agreement significantly exceed requirements that the City could otherwise impose under its existing laws in relation to certain specific activities. In recognition of Developer's commitments and contributions in those

areas, the City expressly agrees to exempt the Project from certain future enactments, fees, charges, assessments, or other exactions as follows.

- A. Affordable/Attainable Housing.** Provided that Developer complies with the Affordable/Attainable Housing commitments set forth in Section 4.10, the City agrees that the Project shall be exempt from any existing or future inclusionary zoning, affordable housing program, attainable housing program, impact fee or any other program or fee the principal purpose of which is to address, mandate, encourage, finance or otherwise deal with affordable, attainable, or other similar housing needs in the City.
- B. Parks/Open Space/ Trails.** The City shall credit Developer against the imposition of any and all existing and future City fees imposed for the specific purpose of funding park, open space, or trail acquisition, construction or operation that would otherwise be assessable within the Project or against the Property.
- C. Water Supply/Storage.** In consideration of Developer waiving any current entitlement to reimbursement for oversizing off-site lines and water storage facilities, including those associated with serving the Regional Medical Center, the City agrees that Developer shall not be required to pay any future assessments or charges or otherwise contribute to future facilities expansion costs related to providing City water service to the Project, other than treated water charges generally applicable on a City-wide basis. The City further agrees to make sufficient water available and to reserve sufficient water to serve the Project. To the extent that Project water needs increase beyond those contemplated in the Goff Water Master Plan, the City's obligations under this subsection shall be inapplicable.
- D. Fire Protection or Law Enforcement Impact Fees.** In consideration of the obligation to pay the Fire and Law Enforcement Impact Fee set forth in Section 6.12, and so long as the obligation to pay said fee is in place, the City expressly agrees to exclude as an impact area and otherwise exempt Developer, Project lands or improvements from any future impact fees or similar charges or assessments imposed by or through the City for the purpose of addressing the fire protection, emergency services, or law enforcement needs in the Grandview Area.

10.08. Traffic Impacts. The City acknowledges that Developer has made substantial commitments to fund traffic and safety improvements in the Grandview Area in association with development of the Project, including the construction and signalization of a new intersection at U.S. Highway 160, construction of portions of an arterial roadway to connect County Road 234 to High Llama Lane, and construction of portions of an arterial roadway to connect County Road 235 to State Highway 160 East.

- A. **Current Major Street Impact Fee.** Pursuant to Article 16 of Chapter 27 of the City Code, the City currently charges a major street impact fee at the time of issuance of any building permit for new construction where City water or City sewer service is provided. The major street impact fee revenue is used to improve or build designated arterial roads within the City. The roads currently designated for improvement do not lie within the Grandview Area.
- B. **Additional Arterial Roads.** As a result of anticipated increases in population in the Grandview Area, there will be a need for additional arterial road construction, over and above that which is planned as part of the Three Springs development. The location and character of the roads needed to serve the Grandview Area have not yet been identified.
- C. **Regional Transportation Study.** The City will use its best efforts to complete a regional transportation study and to develop a transportation plan that will provide guidance for the development of roads and other transportation facilities to best serve the Grandview Area.
- D. **Modifications of Impact Fee.** The transportation plan may lead to modifications of current City Code provisions pertaining to major street impact fees. The City agrees to consider, as part of any such modification, the establishment of separate benefit districts, if such an approach is supported by the data developed as part of the transportation plan.
- E. **Current Fees Applicable.** Pending modification to the existing major street impact fee provisions, Developer shall pay the current major street impact fees delineated in the City Code.
- F. **Future Grandview Fee.** If a separate major street impact fee is established for the Grandview Area (“Grandview Fee”), Developer, as well as other developers within the Grandview Area receiving City water service, shall pay such Grandview Fee as part of the fee for a building permit issued from and after the effective date of the ordinance creating such fee. Developer’s payment of the Grandview Fee shall not exempt Developer from the City-wide major street impact fee, but if the future Grandview Fee includes streets or improvements also encompassed within the City-wide major street impact fee, the Developer shall be entitled to a credit against the City-wide fee to the extent of duplication; provided, however, nothing herein shall prohibit the inclusion of a component for creation or improvement of City streets outside the Grandview Area as part of the Grandview Fee. In the event that the Grandview Fee includes Traverse Road (and associated appurtenances and trails), funds generated by that fee may be applied to assist in funding the construction of the northern portion of Traverse Road from the middle school site to the northern Property boundary (and associated appurtenances and trails), or, if Developer has already installed

that portion of Traverse Road (and associated appurtenances and trails), Developer shall be entitled to a credit against the Grandview Fee equal to the costs associated such installation and construction.

- G. No Credit Against Fees.** Developer shall not receive any credit toward the applicable major street impact fee for the construction or signalization of the new intersection at U.S. Highway 160 or for proposed County Road Improvements, including those called for in the County Agreement, unless otherwise agreed to by the City Council.

10.09. Additional Improvements and Dedications. Unless Project densities exceed those contemplated in Table 3.04, the City agrees that it shall not impose additional requirements for improvements or dedications beyond those described in this Agreement without the consent of Developer.

10.10. City Moratorium. As long as Developer has vested rights in a Phase, the City agrees that it will not impose any moratorium or similar ordinance or resolution limiting or conditioning the rate, timing, or sequencing of development of the Project or any portion thereof, whether affecting parcel or subdivision plats, building permits, occupancy permits, or other entitlements to use, or because of lack of infrastructure capacity (excluding infrastructure to be completed or financed under this Agreement) except for any ordinance, resolution, or regulation enacted by the City on a City-wide basis after the date of this Agreement that is necessary to:

- A. Superior Authority.** Comply with any future state or federal law, mandatory regulation, or order, provided that if such state or federal action prevents or hinders the City from complying with this Agreement, the City is obligated to make reasonable efforts in a timely fashion to remove the moratorium or other restrictions on the Project; or
- B. Unforeseen Threat to Health, Safety, or General Welfare.** Alleviate or otherwise deal with a future unforeseen or unforeseeable, legitimate and significant threat to public health, safety, or general welfare. In such event, any ordinance, resolution, or regulation imposed by the City in an effort to alleviate or address such threat should be imposed for the shortest time possible.

In the event of any such action by the City, Developer shall continue to be entitled to submit proposed final site plans and final plats of subdivisions within the Project, together with associated improvement plans, subject to modifications in applicable City regulations or standards resulting during such a moratorium. Additionally, the term of this Agreement, as set forth in Section 12.01, and any vested rights period for any Phase, as set forth in Section 10.03, shall be extended by the length of time during which a City moratorium is in place.

10.11. Future City Oil and Gas Regulation. The Parties acknowledge that the City intends to enact laws regulating the exploration of oil and gas within the boundaries of the City, including the Property and that such laws and regulations shall be applicable to the Property and the Project subsequent to their enactment. The Parties further acknowledge that the right to explore for, develop and produce oil and gas minerals has been severed from the title obtained by Tierra and held by Developer and that third parties are engaged in active oil and gas development on the Property. As described in Section 4.04, the Codes and Standards may address the manner in which future oil and gas activities shall be conducted in conjunction with the Project.

ARTICLE ELEVEN – Transfer or Assignment

11.01. Transfers and Release of Developer’s Obligations Permitted. Developer may assign all or a portion of its rights hereunder and be released of its corresponding obligations, provided that:

- A. Acquisition of Property.** The assignment is to a person or entity that has acquired all or a portion of the Project; and
- B. In Writing.** The assignment is by a written instrument that expressly assigns such rights and delegates such obligations and is recorded in the real property records of the La Plata County, Colorado; and
- C. Agreement to Be Bound.** Prior to sale or other transfer of the Project as a unit, the Developer has obtained from the buyer or transferee written acknowledgement of the existence of this Agreement and an agreement to be bound thereby, signed by the buyer or transferee, notarized and delivered to the City prior to sale or transfer; and
- D. Prior City Consent/Exception.** Developer has provided prior written notice of the proposed assignment to the City, and the City has provided written consent to the assignment, which consent shall not be unreasonably withheld or delayed provided that the proposed assignee has the demonstrated financial and technical capability to perform Developer’s obligations under this Agreement.

11.02. No Transfer of Developer’s Obligations. So long as not otherwise prohibited by law, the obligations of Developer under this Agreement shall not transfer to or become the obligation of the owner of any individual lot that has been finally subdivided and sold to an end purchaser or user thereof. Developer’s obligations to maintain facilities for which such maintenance responsibility exists under the Schedule of Maintenance Responsibilities and other obligations under this Agreement that are intended to survive such individual sale of a subdivided parcel shall survive such sale, and Developer shall remain obligated in that regard, except

to the extent that such responsibilities have been delegated to third parties or entities with the consent of the City.

ARTICLE TWELVE – Term of Agreement

12.01. Forty Years. The term of this Agreement shall expire upon the earlier of the expiration of the vested period for Phase 2 or forty (40) years from the date of approval of the Agreement by both Parties, except as said periods may be extended during a moratorium by operation of Section 10.10.

ARTICLE THIRTEEN – Enforcement and Remedies

13.01. By Parties Only. This Agreement shall be enforceable only by the Parties.

13.02. Notice of Default. In the event of default by any Party, the non-defaulting Party shall deliver written notice to the defaulting Party describing the nature of the default. The defaulting Party shall have thirty (30) days from receipt of such notice to submit a written response, and, if default is acknowledged, to initiate, diligently pursue, and describe the procedures designed to cure the default.

13.03. Remedies. In the event that any such default is not cured as required above, the non-defaulting Party shall have the right to enforce the defaulting Party's obligations hereunder by an action for any equitable remedy, including injunction or specific performance, an action for damages, or both.

ARTICLE FOURTEEN – Representations and Warranties

14.01. Reliance Generally. Each of the Parties acknowledges that the other Party has expended and will continue to expend substantial time and money with regard to the Project in reliance upon the representations and warranties and covenants of the other.

14.02. Developer's Representations and Warranties. Developer makes the following representations and warranties to the City.

- A. Organization.** Developer is a duly organized, validly existing limited liability company in the State of Colorado.
- B. Authority.** The transactions contemplated by this Agreement and the execution and delivery of all documents required herein, and Developer's performance hereunder, have been duly authorized by all requisite actions of Developer. The execution and delivery of this Agreement and any other documents required herein and the consummation of the transactions

contemplated herein will not result in any violation of, or default under, any term or provision of any applicable agreement, instrument, law, regulation or official policy to which Developer is a party or to which Developer is bound.

- C. **No litigation.** There is no litigation, investigation, or proceeding pending or, to Developer's knowledge, contemplated or threatened against Developer, that would impair or adversely affect Developer's ability to perform its obligations under this Agreement or under any instrument or document related hereto.

14.03. City's Representations and Warranties. The City makes the following representations and warranties to Developer.

- A. **Organization.** The City is a duly organized, validly existing home-rule municipal organization in the State of Colorado.
- B. **Authority.** The transactions contemplated by this Agreement and the execution and delivery of all documents required by this Agreement and the City's performance hereunder have been duly authorized by all requisite actions by the City. The execution and delivery of this Agreement and any other document required herein and the consummation of the transactions contemplated herein will not result in any violation of, or default under, any term or provision of any applicable agreement, instrument, law, rule, regulation or official policy to which the City is a party or to which the City is bound.
- C. **Land Use Regulations.** There are currently no legal challenges to the validity of existing regulations applicable to the City.

14.04. Restatement of Warranties. At any time, or from time to time, upon the request of Developer or the City, the other respective Party shall reaffirm or restate any or all of its representations, warranties and covenants set forth in this Agreement and any other agreements or instruments executed in connection herewith; provided that, if changes in circumstances have affected the accuracy of representations and warranties or have altered the enforceability of covenants, the Party making such reaffirmation or restatement shall describe therein such changes in circumstance and the effect of such changes upon the Party's representations, warranties and covenants.

ARTICLE FIFTEEN – General Provisions

15.01. Notices and Filings. Any and all notices, filings, approvals, consents or other communications required or permitted by this Agreement shall be given in writing and be telecopied, personally delivered, sent by U.S. Mail, postage prepaid, or sent

by Federal Express, Airborne, U.P.S. or other similar nationally recognized overnight courier, addressed as follows:

A. City:

City Manager
949 East Second Avenue
Durango, Co 81301
Telephone: 970-375-5001
Facsimile: 970-375-5018

with copies to:

David P. Smith, Esq.
City Attorney
949 East Second Avenue
Durango, CO 81301
Telephone: 970-375-5007
Facsimile: 970-375-5018

B. Developer:

GRVP, LLC
C/o Mark Mitchell,
General Manager
160 Rock Point Drive, Suite E
Durango, CO 81301
Telephone: 970-385-7770

Patrick Vaughn
160 Rock Point Drive, Suite E
Durango, CO 81301
Telephone: 970-385-7770
Facsimile: 970-385-4227

with copies to:

Maynes, Bradford, Shipps & Sheftel, LLP
Attn: Thomas Shipps
835 E. Second Avenue
P.O. Box 2717
Durango, CO 81302-2717
Telephone: 970-247-1755
Facsimile: 970-247-8827

- 15.02. Effective Upon Receipt.** Notices, filings, consents, approvals and communication shall be deemed to have been given as of the date of receipt, if sent by telecopier, as of the date of delivery, if hand delivered or sent by overnight courier, or as of seventy-two (72) hours following deposit in the U.S. Mail, postage prepaid and addressed as set forth above.
- 15.03. Changes in Addresses.** Either Party may, from time to time, change the persons designated to receive notices or the addresses to which notices should be delivered, by sending written instructions to the other Party regarding such change.
- 15.04. Agreement to be Recorded.** This Agreement, inclusive of all identified exhibits, shall be recorded in its entirety in the official real property records of La Plata County, Colorado, at the expense of Developer, no later than ten (10) days after the Agreement has been executed by the Parties.
- 15.05. Counterparts.** This Agreement may be executed in counterpart, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and attached to a single instrument so that the signatures of the Parties may be physically attached to a single document.
- 15.06. Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.
- 15.07. Waiver.** No delay in exercising any right or remedy shall constitute a waiver hereof. No waiver by the Parties of a breach of any covenant of this Agreement shall be construed as a waiver of any proceeding or succeeding breach of the same or of any covenant or condition of this Agreement.
- 15.08. Attorney's Fees.** If any Party defaults hereunder, the defaulting Party shall pay for the other Party's reasonable attorney's fees incurred in conjunction with the preparation and issuance of notice of and the subsequent cure of other Party by reason of or in connection with the default. In the event either Party hereto finds it necessary to bring an action at law or other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach hereunder, the non-prevailing Party shall pay the Party prevailing in any such action or other proceeding all reasonable attorney's fees, expert witness fees, deposition and trial transcript costs and the costs of court and other similar costs or fees paid or incurred by the by the prevailing Party, and in the event any judgment is secured by such prevailing Party, all such costs and attorney's fees shall be included in any such judgment, with attorney's fees to be set by the court and not by the jury.

- 15.09. Headings.** The descriptive headings of sections of this Agreement are inserted for the convenience only of the Parties and shall not control or affect the meaning or construction of any provision hereof.
- 15.10. Further Acts and Assurances.** Each of the Parties shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement. In the event of any legal action or proceeding instituted by a third party challenging the validity of any provision of this Agreement, the Parties agree to cooperate in diligently defending such action or proceeding.
- 15.11. Time of Essence.** Time is of the essence in this Agreement.
- 15.12. Severability.** Any provision of this Agreement that is declared void or unenforceable shall be severed from this Agreement, and the remainder of the Agreement shall otherwise remain in full force and effect. To the extent that the absence of an invalidated provision would materially defeat the intent of the Parties, the Parties agree to attempt to reform this Agreement in a timely manner and to take such action needed that affords similar protections or confers similar benefits upon the Parties in a lawful manner.
- 15.13. Governing Law.** This Agreement is entered into in Colorado and shall be construed and interpreted under the laws of the State of Colorado.
- 15.14. Force Majeure.** The obligations of the Parties under this Agreement shall be suspended during those periods of time that performance is prevented as a result of actions or circumstances beyond the control of such Party, including without limitation: strikes, accidents, terrorist activity, labor shortages, acts of God, unforeseeable weather conditions, governmental action or unreasonable governmental delay (except as to governmental action or unreasonable governmental delay on the part of the City as it relates to the City's obligations hereunder), and other force majeure causes.
- 15.15. No Third Party Beneficiary.** Except as to named parties to agreements expressly incorporated herein that expressly provide that the City shall act on their behalf, no term or provision of this Agreement is intended to, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no other person, firm, organization or corporation shall have any right or cause of action hereunder.

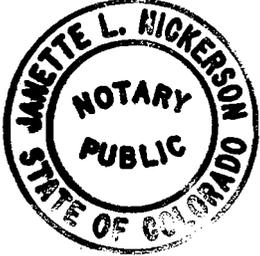
IN WITNESS WHEREOF, the Parties have each signed this Agreement effective as of the date first above written.

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

Subscribed and sworn to before me this 12th day of April, 2005, by Patrick Vaughn, manager of GFMC, LLC, the authorized representative of GRVP, LLC, on behalf of GRVP, LLC.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: August 12, 2007



Janette L. Hickerson
Notary Public
Address: 835 E. 2nd Ave #123 work
P.O. Box 4591 home
Durango CO 81302



**ANNEXATION AGREEMENT
FOR
GRANDVIEW 1ST ADDITION**

THIS AGREEMENT, dated this 15th day of April, 2004, is between the CITY OF DURANGO, a Colorado Municipal Home-Rule Corporation, herein referred to as "City," and TIERRA GROUP, LLC, a Colorado Limited Liability Company, or its assigns, herein collectively referred to as "Applicant."

WITNESSETH:

WHEREAS, Applicant is the owner of a certain tract of property comprising approximately 682 acres legally described and identified as attached hereto as Exhibit "A," which exhibit is made a part hereof (hereinafter referred to as the "Property") and which real estate is contiguous to the City limits of the City; and

WHEREAS, Applicant desires and proposes to develop said Property pursuant to the provisions and regulations as set forth in the City of Durango Land Use and Development Code; and

WHEREAS, pursuant to due legal notice and advertisement in the manner provided by law, the Durango Planning Commission and the Durango City Council have held public hearings as prescribed by law and made recommendations and decisions for approval of the Grandview 1st Addition Annexation and initial zoning to Planned Development; and

WHEREAS, Applicant has committed to donate 35 acres of the Property to Mercy Medical Center and has contracted with Mercy to convey an additional 25 acres for the construction and development of a regional medical center on the Property; and

WHEREAS, concurrent with consideration of the annexation of the Property, the Durango City Council has reviewed the conceptual plan for Applicant's development of the remainder of the Property, as well as the conceptual plan, preliminary plan and final plan for Mercy's development of the proposed regional medical center; and

WHEREAS, due to time constraints regarding the commencement of construction of the regional medical center, it is necessary to address and complete the annexation of the Property prior to the submittal and review of a final site-specific development plan for any portion of the remainder of Applicant's Property; and

WHEREAS, Applicant is currently negotiating the terms and provisions of a Development Agreement with the City of Durango and La Plata County to address the future development of that portion of the Property being retained by Applicant; and

WHEREAS, Applicant is willing to commit to the installation of necessary infrastructure to the Property at this time to enable Mercy Medical Center to initiate construction of the regional medical center, recognizing that no vested rights have been granted to Applicant by the City and that no such rights will be created, either contractually, statutorily or at common law, by the installation of such infrastructure improvements or the execution of this Agreement, although such rights may be granted in a Development Agreement that may be entered into between Applicant and the City; and

WHEREAS, it is the understanding and agreement of both the City and the Applicant that the rights of Applicant to develop the Property retained by Applicant will be defined and determined by the terms, conditions and provisions of the Development Agreement, as well as City codes, regulations and standards which are applicable at the time such development occurs; and

WHEREAS, the City Council of the City of Durango, after due and careful consideration, has concluded that the annexation of the Property to the City and its zoning and development on the terms and conditions herein set forth, together with the Planned Development Agreement for Mercy Regional Medical Center, the Development Agreement with Tierra Group, LLC for the Three Springs Development, and the Three Springs Planned Development Agreement, would further enable the City to control the development of the area and best serve the interests of the City.

Return to City Clerk, 949 Second Ave, Durango, Co.
EXHIBIT A - Annexation Agreement

NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements herein set forth, the parties hereto agree as follows:

I. CONTRACT ENFORCEMENT PROVISIONS

A. Applicable Law

This Agreement is made pursuant to and in accordance with the provisions of C.R.S., §31-12-101, et seq. and the Code of Ordinances of the City of Durango.

B. Remedies for Default

1. Applicant agrees to faithfully and timely perform the covenants, conditions and obligations herein set forth. In the event of Applicant's default thereunder, City shall give notice of default to Applicant at the address hereinafter set forth, specifying the nature and extent of the default with reasonable particularity, and providing Applicant with a period of thirty (30) days to cure such default or to initiate and diligently pursue procedures necessary to cure such default if the default cannot reasonably be cured within the thirty (30) days allowed.
2. Should Applicant fail to cure such default or initiate and diligently pursue procedures necessary to cure such default within the thirty (30) day period subsequent to notice, City may, at its election, initiate a suit for specific performance or mandatory injunctive relief, or, alternatively, draw down an amount necessary to cure such default from the Surety created by Applicant for the benefit of the City pursuant to Part IV of this Annexation Agreement. Funds shall be drawn upon such Surety through the City's providing to the issuing bank a copy of the notice of default previously forwarded to Applicant, together with the City's affidavit advising the issuing bank that the default complained of within the notification has neither been cured nor have procedures been initiated and diligently pursued to cure said default within the aforementioned thirty (30) day notice period.

C. Notice

1. Any notice required pursuant to the terms of this Agreement shall be effective if deposited in the United States mails, postage prepaid, addressed to the respective parties at the addresses hereinafter set forth or at such other addresses as a party may designate through written notification to the other party at the address hereinafter set forth. Addresses for notice are as follows:

CITY: Otha J. Rogers, Public Works Director
City of Durango
949 East 2nd Avenue
Durango, CO 81301

Copy to: David Smith, City Attorney
P.O. Box 3150
Durango, Colorado 81302

APPLICANT: Tierra Group, LLC
Gary Whalen, President
160 Rock Point Dr., Suite E
Durango, CO 81301

Copy to: Tom Shipps
Maynes, Bradford, Shipps & Sheftel, LLP
835 E. 2nd Avenue, Suite 123
Durango CO 81301

2. Notice shall be effective three (3) days after notice is deposited in the United States mails, postage prepaid, as hereinabove set forth.

D. **Amendments**

This Agreement may only be amended through a written instrument executed by the parties hereto which shall thereafter be appended hereto and become a part hereof. Verbal amendments shall be ineffective for any purpose.

E. **Severability**

Should any term, provision or condition of this Agreement be determined invalid or unenforceable, the invalidity or unenforceability of any such term, provision or condition shall not affect the validity or enforceability of any other term, provision or condition herein contained, all terms, conditions and provisions herein being independent and severable.

F. **Binding Effect**

This Agreement shall be binding upon the respective parties hereto, their heirs, successors and assigns.

G. **Termination/Invalidation**

This Agreement is made in specific anticipation of the annexation of the Property to the City of Durango. Should such annexation not occur, the terms, provisions and conditions of this Agreement shall be void and unenforceable and all parties hereto shall be relieved of any further obligations with respect to the terms herein set forth. In such event, the City reserves the right to initiate and complete de-annexation procedures for all or any portion of the Property which has been previously annexed.

H. **Effective Date**

This Agreement shall become effective upon its execution and subsequent recording in the offices of the La Plata County Clerk and Recorder.

I. **Execution of Documents**

1. Applicant agrees to execute any and all documents necessary to effectuate the terms and provisions of the agreements herein contained and to deliver such documents to the City or to such agencies or offices as the City may designate. Applicant further agrees that in conjunction with the performance of the obligations set forth within this Agreement, Applicant will comply with all ordinances, regulations and construction specifications of the City of Durango together with any future ordinances, regulations or specifications that may be hereinafter adopted, except to the extent otherwise provided in the Development Agreement for the Three Springs Development that may be entered into by and among the City, the Applicant, and other applicable parties; provided, however, any such future ordinances, regulations or specifications adopted after the effective date of this Agreement shall be of general applicability and shall not be limited or specifically directed to the Grandview 1st Addition.
2. Applicant agrees that this Agreement and all appurtenant documents shall be recorded in the office of the La Plata County Clerk and Recorder and that annexation shall not be effective until such time as this Agreement and the Annexation Plat for the Grandview 1st Addition have been recorded. Applicant shall promptly furnish proof of said recording to the City Department of Planning and Community Development.

II. **LAND USE PROVISIONS**

A. **Land Use and Density**

1. The Property's approved land use shall be determined in accordance with the adopted Grandview Area Plan, The Mercy Regional Medical Center Planned Development Agreement, The Development Agreement for the Three Springs Development and/or the Three Springs Planned Development Agreement.

2. All subsequent development on the Property shall be in accordance with final site development plans that have been reviewed and approved by the City prior to the issuance of a building permit.
3. No uses of the Property shall be made following annexation of the Property unless specifically allowed for under the City's building permit or excavation permit procedures, or allowed for in the zone district(s) enacted for the Property following annexation, including the Mercy Regional Medical Center Planned Development Agreement, The Development Agreement for the Three Springs Development and/or the Three Springs Planned Development Agreement.

B. Annexation

The annexation of the Property shall be as specifically set forth on the annexation plat for the Grandview 1st Addition.

C. Initial Zoning

1. Zoning of the annexed Property shall be considered an initial zoning and shall be consistent with the goals, policies, and land use designations of the Durango Comprehensive Plan.
2. The ordinance enacting the zoning of the Property to be annexed shall not be finally adopted by the City Council prior to the date of final adoption of the annexation ordinance, but the annexation ordinance may include the zoning ordinance for the annexed Property.
3. The requested zoning designation of Planned Development shall be applied to the Property and shall become effective as of the effective date of the annexation ordinance if the annexation ordinance includes the zoning ordinance.

D. Project Development

No construction activity, other than the Surcharge Activity for the Mercy Regional Medical Center, may begin until financial arrangements as set forth in this Agreement are in place and accepted by the City. No building or conveyance of title to any lot or tract shall be made until the Final Annexation Plat and any Final Plat of any subdivision are recorded in the offices of the La Plata County Clerk and Recorder, provided, however, that the Applicant shall be allowed to convey its entire interest subject to all of the terms and conditions of this Agreement. Without prior written consent and approval of the City's Director of Public Works, no combustible above-ground construction shall occur until such time as the water improvements system, or a temporary water system approved by the City Director of Public Works, is in place and accepted. No occupancy permits shall be issued until such time as all public and private utility systems and the road system necessary to serve such improvements are in place and accepted.

III. PUBLIC IMPROVEMENTS

A. Public Improvements to be Provided by Applicant

Identified public improvements shall be phased and shall be the responsibility of either the Applicant with respect to Phase I, or the developer(s) of subsequent phases. All public improvements to be provided by the Applicant or the developer(s) of subsequent phases shall be provided, constructed or installed in accordance with an approved Public Improvements Agreement. Applicant shall be responsible for the construction and installation of public improvements required for Phase I of the Development, as described on Exhibit B hereto attached and by this reference incorporated herein. Such public improvements shall include the following:

1. Access
2. Right-of-Way Dedication
3. Streets

4. Water
5. Drainage
6. Other Public Improvements
 - a. electrical
 - b. natural gas
 - c. lighting
 - d. telephone
 - e. landscaping and street trees on dedicated streets
 - f. intersection improvements at US Highway 160 and CR 233 in accordance with Colorado Department of Transportation Permit
 - g. sewer extensions and improvements.

Financial obligations in favor of La Plata County for impacts on County Roads and specific improvements to County Roads shall be specifically defined and secured (surety in favor of La Plata County) in the manner to be set forth in the anticipated Development Agreement, including any exhibits to said Agreement.

Public improvements for subsequent phases of the Development shall be specifically defined and secured as described in Planned Development Agreements and Public Improvement Agreements for each phase of development of the Property, and/or in the anticipated Development Agreement.

B. Authorizations

1. Start of Improvements
Any construction begun prior to approvals is subject to removal at the direction of the City Engineer.
2. Inspections
City inspectors shall have the right to reject any installation or construction which does not meet applicable City of Durango specifications, including water system improvements. Notice of rejection shall be made to Applicant and Applicant's contractor. It shall be the responsibility of Applicant to address or correct any deficiency. If Applicant is not present, then the inspector shall have the authority to reject any workmanship which does not meet applicable City of Durango specifications.
3. Testing
Testing shall be performed in the manner prescribed in the City specifications. Results of all tests shall be presented to and approved by the City Engineer prior to release of any part of the financial guarantee.
4. Revegetation
All devegetated areas shall be revegetated in accordance with landscaping plans approved by the City's Director of Parks and Recreation and in accordance with applicable storm water treatment regulations of the City of Durango.
5. Construction on Steep Slopes
 - a. Recommendations included in the geologic reports and letters from geotechnical consultants and project engineers as set forth in documents shall become conditions of any construction on steep or unstable slopes. Steep slopes shall be defined as slopes exceeding a twenty percent (20%) grade, as determined by the City Engineer.
 - b. Damage resulting from any construction by Applicant or its contractor shall be Applicant's responsibility. The City Engineer may require the restoration or stabilization of any slope which is altered and which may cause damage to public or private property in the opinion of the City Engineer.

C. Modifications to Plans and Specifications

1. Any modifications to public improvements plans or specifications must be approved by the City Engineer. Failure to secure written approval of any change shall not relieve Applicant from the obligation to remove or replace changes not approved.

2. Minor changes which do not cause any development standard or City specification to be compromised and which are not contrary to geotechnical recommendations or conditions of approval may be made without approval by the City Engineer. Any changes so made must be shown on as-built drawings.

D. Floodplain/FEMA Mapping

1. City of Durango standards and ordinances will prevail with respect to development within the floodplain.
2. At the completion of major development construction (roadways, utility construction, etc.), Applicant shall provide sufficient detailed engineering data as determined necessary by the City Engineer which will allow the FEMA floodplain mapping for the area to be amended to reflect the as-built situation.

E. No Vesting of Development Rights; Public Improvements as Consideration for Future Development Agreement

The City and Applicant acknowledge that the Public Improvements to be provided pursuant to this Agreement may also serve as partial consideration for a future Development Agreement for the Three Springs Planned Development that may be entered into by and among the Applicant, the City, and other applicable parties. The City and the Applicant further acknowledge that negotiation of such Development Agreement has commenced and that the parties are proceeding in good faith to complete such Development Agreement. Notwithstanding the foregoing, there shall be no legal obligation to complete and consummate the Development Agreement for the Three Springs Planned Development, nor shall the completion or consummation of such Development Agreement be a condition to the validity or enforceability of this Agreement. The City and the Applicant hereby expressly acknowledge and agree that there shall be no contractual, statutory or common law vesting of development rights associated with or arising from this Agreement, from the Grandview 1st Addition Annexation, or from the completion of infrastructure improvements described in the Public Improvements Agreement attached hereto as Exhibit B. However, given that the Public Improvements to be provided pursuant to this Agreement may also serve as partial consideration for the anticipated Development Agreement, the City and the Applicant may provide for the vesting of development rights in such anticipated Development Agreement.

IV. FINANCIAL ARRANGEMENTS

- A. Applicant agrees, prior to the commencement of construction, to provide security for the installation of public improvements in the form of a letter or letters of credit, to be issued by a lending institution or lending institutions satisfactory and acceptable to the City, the amount of \$7,750,000.00 ("Surety"), which is an amount equal to the anticipated cost of construction and installation of those certain public improvements required as a condition for annexation, as approved by the City Engineer. The Surety shall be in an acceptable form to the City of Durango and shall provide that funds may be withdrawn in the event of default by Applicant as set forth in Section I hereof or in the event public improvements have not been fully installed, inspected and accepted by the City within the applicable time period for each type of public improvement, as set forth within the Public Improvements Agreement attached hereto as Exhibit 'B' and by this reference incorporated herein.

The parties' obligations under this Agreement shall be suspended during those periods of time when performance is prevented as a result of actions or circumstances beyond the control of such party, including, without limitation: strikes, accidents, terrorist activity, labor shortages, acts of God, unforeseeable weather conditions, governmental action or unreasonable governmental delay, and other force majeure causes.

The Surety shall authorize the City of Durango to draw funds through written notification of default or failure to complete improvements within the specified time frame, to be verified by an affidavit from the City Engineer specifying the nature and extent of the default, the furnishing of any applicable notice required in conjunction with default, or the expiration of time and lack of completion of public improvements as required hereunder. In the event of default or failure of completion, the City shall be authorized to withdraw from the letter or letters of credit funds necessary to complete or correct public improvements which have not been installed or have not been properly installed in accordance with the obligations of this Agreement.

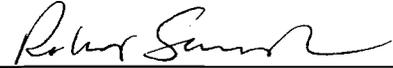
- B. To satisfy Applicant's responsibility to provide security during the one (1) year warranty period, after completion and acceptance of each type of public improvement, Applicant shall furnish the City, in a form acceptable to the City, either:
1. an extension of the Surety described in Paragraph A above to cover the one (1) year warranty period with respect to each type of public improvement; or
 2. a developer's bond, with adequate Surety, in a form acceptable to the City, providing bonded coverage during the warranty period for each type of public improvement. [If Applicant elects to furnish a developer's warranty bond in lieu of an extension of the Surety as described above, the form of warranty bond shall be submitted to the City and approved by the City in writing prior to initiation of construction and the executed bond shall be in place prior to the acceptance by the City of that type of public improvement.]; or
 3. another form of security acceptable to the City.
- C. Partial reductions in the Surety to be furnished pursuant to Paragraph A above shall be allowed as each type of public improvement is completed, inspected, approved and accepted by the City of Durango. Upon completion, inspection, approval and acceptance of any category of public improvements, the warranty period for such public improvements shall commence immediately thereafter. The types of public improvements and the requisite guarantee during the one (1) year warranty period shall be no less than the following:
- | | |
|-----------------------------|----------------|
| Roads and Street Drainage | \$2,528,926.00 |
| Water System | \$2,424,125.00 |
| Landscaping | \$1,267,885.30 |
| Other Utilities | \$ 152,000.00 |
| Traverse Wash | \$ 975,000.00 |
| Site Improvements – Partial | \$ 552,684.00 |
- D. Prior to approval of the Tierra Planned Development Phase 1, Applicant shall have entered into binding agreement(s) with the City regarding dedication of school lands and park lands.
- E. Impacts on La Plata County roads, as more fully identified on Exhibit D to the Intergovernmental Agreement and Memorandum of Understanding [Mercy Medical Center Surcharge Permit] by and among the Board of County Commissioners of La Plata County, Colorado, the City, the Applicant, and Mercy Medical Center of Durango, dated December 3, 2003, shall be addressed as set forth in Section III.A above

IN WITNESS WHEREOF, the parties have executed this Annexation Agreement the day and year first above written.

APPLICANT:

TIERRA GROUP, LLC

BY GFMC, LLC, Manager



Robert Santistevan, Manager
2577 N. Main Avenue
Durango, Colorado 81301

CITY OF DURANGO, COLORADO, a Municipal
Home-Rule Corporation

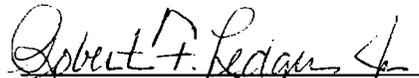
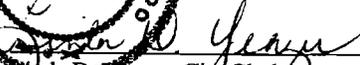

Robert F. Ledger, Jr., City Manager
Blake D. Yeager, City Clerk

EXHIBIT 'A'
[GRANDVIEW 1ST ADDITION LEGAL DESCRIPTION]

A tract of land located in §35, Township 34½ North, Range 9 West; §2, Township 34 North, Range 9 West; and the N½ of §11, Township 34 North, Range 9 West, N.M.P.M., La Plata County, Colorado being more particularly described as follows:

Beginning at the Southwest corner of Section 35, Township 34 1/2 North, Range 9 West N.M.P.M., being a 3 1/4" diameter aluminum cap stamped BLM 1957-88;

Thence N 04°28'43" E along the westerly line of said Section 35, a distance of 1314.40 feet, to the Southwest corner of Lot 4 of said Section 35;

Thence N 04°28'43" E along the westerly line of said Section 35, a distance of 1543.59 feet to the Northwest corner of said Section 35, Township 34 1/2 North, Range 9 West, being a 2" diameter aluminum cap stamped Gibbons LS 23498;

Thence S 88°42'01" E along the north line of said Section 35, a distance of 1312.51 feet, to the west one-sixteenth corner of said Section 35, Township 34 1/2 North, Range 9 West, and Section 35, Township 35 North, Range 9 West, being a 2" diameter aluminum cap stamped Bechtolt Eng. LS 27937;

Thence S 88°42'01" E along the north line of said Section 35, a distance of 1312.51 feet to the north one-quarter corner of said Section 35, Township 34 1/2 North, Range 9 West, being a original stone marked 1/4;

Thence S 88°45'06" E along the north line of said Section 35, a distance of 2643.04 feet to the Northeast corner of said Section 35, being a 2" diameter aluminum cap stamped Gibbons LS 23498;

Thence S 01°53'58" W along the east line of said Section 35, a distance of 2564.51 feet, to the north line of Tract IV recorded under Reception number 820536;

Thence S 88°44'23" W along the said north line of Tract IV recorded under Reception number 820536, a distance of 63.77 feet, to the Northwest corner of said Tract IV, being a 2" diameter aluminum cap stamped LS 28265;

Thence S 02°26'05" W, a distance of 171.28 feet, to the northwest of the La Paloma Subdivision recorded under Reception number 612119;

Thence S 02°08'41" W along the said La Paloma Subdivision, a distance of 1321.74 feet, to the northeast corner of the Palo Verde Subdivision recorded under Reception number 648000, being a 1 1/2" aluminum cap stamped NE COR 1975 LS 9185;

Thence N 89°56'04" W along the said Palo Verde Subdivision, a distance of 356.74 feet;

Thence southwesterly along the said Palo Verde Subdivision, being a curve to the right, having a radius of 636.62 feet, an arc length of 625.76 feet, a chord bearing of S 15°02'08" W, a distance of 600.87 feet;

Thence southwesterly along the said Palo Verde Subdivision, being a curve to the right, having a radius of 2864.79 feet, an arc length of 350.00 feet, a chord bearing of S 46°41'41" W, a distance of 349.78 feet, to a 1 1/2" diameter aluminum cap stamped McCormack LS 22574;

Thence S 50°11'41" W along the said Palo Verde Subdivision, a distance of 960.00 feet, to a 1 1/2" diameter aluminum cap stamped McCormack LS 22574;

Thence southwesterly along the said Palo Verde Subdivision, being a curve to the left, having a radius of 1145.92 feet, an arc length of 400.00 feet, a chord bearing of S 40°11'41" W, a distance of 397.97 feet, to a 1 1/2" diameter aluminum cap stamped McCormack LS 22574;

Thence S 30°11'41" W along the said Palo Verde Subdivision, a distance of 717.00 feet, to a 1 1/2" diameter aluminum cap stamped McCormack LS 22574;

Thence southwesterly along the said Palo Verde Subdivision, being a curve to the left, having a radius of 954.93 feet, an arc length of 550.00 feet, a chord bearing of S 13°41'41" W, a distance of 542.43 feet, to a 1 1/2" diameter aluminum cap stamped McCormack LS 22574;

Thence S 02°48'19" E along the said Palo Verde Subdivision, a distance of 593.00 feet, to a 1 1/2" diameter aluminum cap stamped McCormack LS 22574;

Thence southeasterly along the said Palo Verde Subdivision, being a curve to the left, having a radius of 381.97 feet, an arc length of 350.00 feet, a chord bearing of S 29°03'18" E, a distance of 337.88 feet;

Thence S 55°18'19" E along the said Palo Verde Subdivision, a distance of 200.00 feet;
Thence southeasterly along the said Palo Verde Subdivision, being a curve to the right, having a radius of 286.48 feet, an arc length of 100.38 feet, a chord bearing of S 45°16'02" E, a distance of 99.86 feet, to the south line of said Section 2;

Thence S 89°57'16" W along the south line of said Section 2, a distance of 122.67 feet, to a point on the northerly or westerly right of way of the abandoned D&RGW railroad, being a 1 1/2" diameter aluminum cap stamped Gibbons LS 23498;

Thence southeasterly along the said right of way of the abandoned D&RGW railroad, being a curve to the right, having a radius of 198.00 feet, an arc length of 301.46 feet, a chord bearing of S 09°02'58" E, a distance of 273.18 feet, to a point of compound curvature;

Thence southwesterly along the said right of way of the abandoned D&RGW railroad, being a curve to the right, having a radius of 473.78 feet, an arc length of 542.30 feet, a chord bearing of S 67°21'34" W, a distance of 513.17 feet;

Thence S 14°26'42" W, a distance of 114.35 feet, to a point on the northerly right of way line of US Highway 160;

Thence northwesterly along the said right of way for US Highway 160, being a curve to the right, having a radius of 5670.00 feet, an arc length of 488.73 feet, a chord bearing of N 73°06'54" W, a distance of 488.58 feet, to a point on the west line of the NE1/4 of Section 11, Township 34 North, Range 9 West;

Thence N 02°20'48" E along the said west line of the NE1/4 of Section 11, a distance of 215.83 feet, to a point on the southerly right of way line of the abandoned D&RGW railroad, as described and recorded under Reception number 839733, being a 1 1/2" diameter aluminum cap stamped Kroeger LS 17494;

Thence N 52°34'41" W along the southerly right of way line of the abandoned D&RGW railroad, a distance of 374.08 feet, to a point on the north line of said Section 11, being a 3/8" diameter rebar;

Thence N 88°35'17" W along the north line of said Section 11, a distance of 131.44 feet to a 1 1/2" diameter aluminum cap stamped Gibbons LS 23498;

Thence N 00°13'44" W, a distance of 926.91 feet, to a 1 1/2" diameter aluminum cap stamped Gibbons LS 23498;

Thence N 74°13'32" W, a distance of 859.86 feet, to a point on the west line of the SE1/4 SW1/4 of said Section 2;

Thence N 02°24'30" E along the said west line of the SE1/4 SW1/4 of said Section 2, a distance of 205.10 feet, to the Southwest corner of the NE1/4 SW1/4 of said Section 2;

Thence N 02°24'30" E, a distance of 1345.12 feet to the Northwest corner of the NE1/4 SW1/4 of said Section 2;

Thence N 02°46'11" E, a distance of 1305.75 feet to the Northwest corner of the SE1/4 NW1/4 of said Section 2;

Thence N 02°46'11" E, a distance of 1257.40 feet to the Northwest corner of the NE1/4 NW1/4 of said Section 2;

Thence S 89°56'04" E, a distance of 1351.19 feet, to the Point of Beginning.

Containing 680.81 acres, more or less.

SUBJECT TO all easements of public record, or otherwise established.



SUBDIVISION OR DEVELOPMENT IMPROVEMENTS PUBLIC IMPROVEMENTS AGREEMENT

For: THREE SPRINGS DEVELOPMENT MINOR SUBDIVISION, aka VILLAGE I, FILING-I

Location: THREE SPRINGS, GRANDVIEW AREA

Intending to be legally bound, the undersigned person(s) hereby agree(s) to provide throughout this subdivision or development as shown on the plat of the same, dated April ____, 2004, the following public improvements:

IMPROVEMENT	UNITS	ESTIMATED CONSTRUCTION COST	CONSTRUCTION COMPLETION DATE
Street Base	-	SCHEDULE 1	AUGUST 31, 2005
Street Paving	-	SCHEDULE 1	OCTOBER 31, 2005
Driveway Return(s)	-	SCHEDULE 1	SEPTEMBER 30, 2005
Curb & Gutter	-	SCHEDULE 1	SEPTEMBER 30, 2005
Sidewalk	-	SCHEDULE 1	SEPTEMBER 30, 2005
Storm Sewer & Emergency Access	-	SCHEDULE 1,6 & 7	NOVEMBER 30, 2004
*Sanitary Sewer Main	-	NOT REQ'D- SDSA	NOVEMBER 30, 2004
Manhole(s)	-	NOT REQ'D- SDSA	NOVEMBER 30, 2004
*Water Main	-	SCHEDULE 3	NOVEMBER 30, 2004
Valves	-	SCHEDULE 3	NOVEMBER 30, 2004
Fire Hydrant(s) & Assembly	-	SCHEDULE 3	NOVEMBER 30, 2004
Street Name & Traffic Sign(s)	-	SCHEDULE 1	NOVEMBER 30, 2005
Landscaping	-	SCHEDULE 4	NOVEMBER 30, 2006*

* Landscaping Completion Schedule may be adjusted to allow for acceptance of other Project Construction Schedules earlier

TOTAL ESTIMATED COST OF IMPROVEMENTS \$7,750,000

TOTAL COST TO BE SECURED \$7,750,000

*Total cost does not include tap fees nor plant investment fees. These fees must be paid prior to connection of the service line(s) with the utility main.

City Engineer

The Developer agrees to inform the City Engineer at least two weeks prior to any construction performed under this agreement.

The above improvements shall be constructed in accordance with City of Durango Development Standards and Specifications and in accordance with the time schedules shown above.

The developer agrees to provide the City with a financial guarantee, in a form acceptable to the City, in the amount of 100% of the total estimated cost of the public improvements, which guarantee shall have a term of not less than two months beyond the last construction completion date. In addition thereto, the developer shall be required to provide for the benefit of the City a financial guarantee in an amount equal to 50% of the estimated costs of the public improvements, which guarantee shall become effective upon completion and acceptance of the public improvements by the City and shall extend for a period of twelve (12) months thereafter. After each phase of the improvements has been accepted, the developer may request the City to release up to 50% of the estimated cost of the accepted improvements, provided a financial guarantee is in place which covers 50% of the estimated cost of the accepted improvements for the entire warranty period of one (1) year after completion and acceptance of said improvements.

No Certificate of Occupancy shall be issued until the described public improvements, excluding landscaping, have been completed and accepted by the City Engineer.

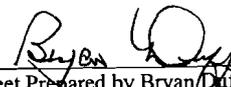
The date of acceptance by the Director of Public Works shall begin the warranty period of the respective public improvement or improvements, which warranty shall run in favor of the City of Durango and shall extend for a period of one (1) year.

Developer agrees that if developer fails to complete the above improvements within the time schedules herein set forth, the City has the right to draw upon the financial guarantee to complete said improvements. The City shall also have the right to withdraw funds from the financial guarantee during the warranty period for purposes of completing repairs, which are not completed by the developer during the warranty period.

The parties' obligations under this Agreement shall be suspended during those periods of time when performance is prevented as a result of actions or circumstances beyond the control of such party, including, without limitation: strikes, accidents, terrorist activity, labor shortages, acts of God, unforeseeable weather conditions, governmental action or unreasonable governmental delay, and other force majeure causes.

Signatures of person(s) responsible for the construction of improvements:

TIERRA GROUP, LLC
by GFMC, LLC, Manager


Worksheet Prepared by Bryan Duff, PE, Goff Engr.


Robert Santistevan, Manager
2577 N. Main Avenue
Durango, Colorado 81301

Dated: 4/15/04
(Construction completion is referred to this date)

**THREE SPRINGS, VILLAGE I - FILING I
DIA COST OF IMPROVEMENTS**

3/11/2004

DESCRIPTION	UNIT	QNTY	UNIT PRICE	TOTAL PRICE
SCHEDULE 1 - ROADS AND STREET DRAINAGE				
* THREE SPRINGS TRAIL				
CLEARING AND GRUBBING	ACRE	9	\$ 5,000.00	\$ 45,000.00
REMOVAL OF FENCE	LF	550	\$ 2.00	\$ 1,100.00
UNCLASSIFIED EXCAVATION (CIP)	CY	16835	\$ 5.00	\$ 84,175.00
MUCK EXCAVATION	CY	3566	\$ 8.00	\$ 28,528.00
EMBANKMENT (CIP)	CY	21020	\$ 5.00	\$ 105,100.00
TOPSOIL	CY	1333	\$ 7.00	\$ 9,331.00
SEEDING (NATIVE)/MULCHING/MULCH TACKIFIER	ACRE	3	\$ 3,000.00	\$ 9,000.00
AGGREGATE BASE COURSE (CLASS 2)	TON	12300	\$ 11.00	\$ 135,300.00
AGGREGATE BASE COURSE (CLASS 6)	TON	7043	\$ 15.00	\$ 105,645.00
HBP (GRADING SX)(75)(PG-58-28)	TON	5555	\$ 50.00	\$ 277,750.00
48" HEADWALL - TYPE "S"	EA	2	\$ 476.00	\$ 952.00
24" CORRUGATED STEEL PIPE	LF	498	\$ 55.00	\$ 27,390.00
24" STEEL END SECTION	EA	5	\$ 325.00	\$ 1,625.00
48" CORRUGATED STEEL PIPE	LF	172	\$ 95.00	\$ 16,340.00
INLET - TYPE C (10')	EA	1	\$ 2,800.00	\$ 2,800.00
INLET - TYPE R - L5 (5')	EA	1	\$ 2,500.00	\$ 2,500.00
INLET - TYPE R - L5 (10')	EA	4	\$ 3,500.00	\$ 14,000.00
INLET - TYPE R - L10 (5')	EA	3	\$ 4,000.00	\$ 12,000.00
INLET - TYPE R - L15 (5')	EA	1	\$ 5,800.00	\$ 5,800.00
CONCRETE SIDEWALK	SY	3433	\$ 30.00	\$ 102,990.00
CONCRETE CURB RAMP	SY	67	\$ 60.00	\$ 4,020.00
CURB AND GUTTER - TYPE 2 (SECT. 1M)	LF	372	\$ 13.00	\$ 4,836.00
CURB AND GUTTER - TYPE 2 (SECT. 1B)	LF	4761	\$ 10.00	\$ 47,610.00
CURB AND GUTTER - CITY OF DURANGO	LF	5563	\$ 10.00	\$ 55,630.00
2" ELECTRICAL CONDUIT	LF	5920	\$ 10.00	\$ 59,200.00
LIGHT STANDARD STEEL (40 FEET)	EA	26	\$ 2,000.00	\$ 52,000.00
CONCRETE FOUNDATION PAD	EA	26	\$ 750.00	\$ 19,500.00
LUMINAIRE HIGH PRESSURE SODIUM (400 WATT)	EA	26	\$ 500.00	\$ 13,000.00
SIGNAGE	LS	1	\$ 8,050.00	\$ 8,050.00
MOBILIZATION	LS	1	\$ 60,560.00	\$ 60,560.00
SUBTOTAL THREE SPRINGS TRAIL				\$ 1,311,732.00
* TRAVERSE				
CLEARING AND GRUBBING	ACRE	6	\$ 5,000.00	\$ 27,500.00
UNCLASSIFIED EXCAVATION (CIP)	CY	11500	\$ 5.00	\$ 57,500.00
MUCK EXCAVATION	CY	763	\$ 8.00	\$ 6,104.00
EMBANKMENT (CIP)	CY	10310	\$ 5.00	\$ 51,550.00
TOPSOIL	CY	1221	\$ 7.00	\$ 8,547.00
SEEDING (NATIVE)/MULCHING/MULCH TACKIFIER	ACRE	2	\$ 3,000.00	\$ 6,300.00
AGGREGATE BASE COURSE (CLASS 2)	TON	6970	\$ 11.00	\$ 76,670.00
AGGREGATE BASE COURSE (CLASS 6)	TON	3747	\$ 15.00	\$ 56,205.00
HBP (GRADING SX)(75)(PG-58-28)	TON	3162	\$ 50.00	\$ 158,100.00
18" CORRUGATED STEEL PIPE	LF	112	\$ 50.00	\$ 5,600.00
24" CORRUGATED STEEL PIPE	LF	456	\$ 55.00	\$ 25,080.00
24" STEEL END SECTION	EA	4	\$ 325.00	\$ 1,300.00
INLET - TYPE C (5')	EA	5	\$ 2,100.00	\$ 10,500.00
INLET - TYPE R - L5 (10')	EA	4	\$ 3,500.00	\$ 14,000.00
INLET - TYPE R - L10 (5')	EA	2	\$ 4,000.00	\$ 8,000.00
INLET - TYPE R - L10 (10'), (5')	EA	3	\$ 5,400.00	\$ 16,200.00
CONCRETE SIDEWALK	SY	2725	\$ 30.00	\$ 81,750.00

**THREE SPRINGS, VILLAGE I - FILING I
DIA COST OF IMPROVEMENTS**

3/11/2004

DESCRIPTION	UNIT	QNTY	UNIT PRICE	TOTAL PRICE
CONCRETE CURB RAMP	SY	90	\$ 60.00	\$ 5,400.00
CURB AND GUTTER - TYPE 2 (SECT. 1M)	LF	270	\$ 13.00	\$ 3,510.00
CURB AND GUTTER - TYPE 2 (SECT. 1B)	LF	2815	\$ 10.00	\$ 28,150.00
CURB AND GUTTER - CITY OF DURANGO	LF	3072	\$ 10.00	\$ 30,720.00
2" ELECTRICAL CONDUIT	LF	3192	\$ 10.00	\$ 31,920.00
LIGHT STANDARD STEEL (40 FEET)	EA	15	\$ 2,000.00	\$ 30,000.00
CONCRETE FOUNDATION PAD	EA	15	\$ 750.00	\$ 11,250.00
LUMINAIRE HIGH PRESSURE SODIUM (400 WATT)	EA	15	\$ 500.00	\$ 7,500.00
SIGNAGE	LS	1	\$ 6,900.00	\$ 6,900.00
MOBILIZATION	LS	1	\$ 35,370.00	\$ 35,370.00
SUBTOTAL TRAVERSE				\$ 801,626.00
* CONFLUENCE				
CLEARING AND GRUBBING	ACRE	2	\$ 5,000.00	\$ 10,000.00
REMOVAL OF FENCE	LF	175	\$ 2.00	\$ 350.00
UNCLASSIFIED EXCAVATION (CIP)	CY	3035	\$ 5.00	\$ 15,175.00
MUCK EXCAVATION	CY	277	\$ 8.00	\$ 2,216.00
EMBANKMENT (CIP)	CY	1810	\$ 5.00	\$ 9,050.00
TOPSOIL	CY	250	\$ 7.00	\$ 1,750.00
SEEDING (NATIVE)/MULCHING/MULCH TACKIFIER	ACRE	1	\$ 3,000.00	\$ 1,500.00
AGGREGATE BASE COURSE (CLASS 6)	TON	1530	\$ 15.00	\$ 22,950.00
HBP (GRADING SX)(75)(PG-58-28)	TON	932	\$ 50.00	\$ 46,600.00
24" CORRUGATED STEEL PIPE	LF	334	\$ 55.00	\$ 18,370.00
24" STEEL END SECTION	EA	2	\$ 325.00	\$ 650.00
36" CORRUGATED STEEL PIPE	LF	258	\$ 75.00	\$ 19,350.00
36" STEEL END SECTION	EA	1	\$ 500.00	\$ 500.00
INLET - TYPE R - L5 (5')	EA	1	\$ 2,500.00	\$ 2,500.00
INLET - TYPE R - L5 (10')	EA	3	\$ 3,500.00	\$ 10,500.00
INLET - TYPE R - L10 (5')	EA	2	\$ 4,000.00	\$ 8,000.00
CONCRETE SIDEWALK	SY	1926	\$ 30.00	\$ 57,780.00
CONCRETE CURB RAMP	SY	30	\$ 60.00	\$ 1,800.00
CURB AND GUTTER - TYPE 2 (SECT. 1B)	LF	1005	\$ 10.00	\$ 10,050.00
CURB AND GUTTER - CITY OF DURANGO	LF	1621	\$ 10.00	\$ 16,210.00
2" ELECTRICAL CONDUIT	LF	1670	\$ 10.00	\$ 16,700.00
LIGHT STANDARD STEEL (40 FEET)	EA	4	\$ 2,000.00	\$ 8,000.00
CONCRETE FOUNDATION PAD	EA	4	\$ 750.00	\$ 3,000.00
LUMINAIRE HIGH PRESSURE SODIUM (400 WATT)	EA	4	\$ 500.00	\$ 2,000.00
SIGNAGE	LS	1	\$ 1,500.00	\$ 1,500.00
MOBILIZATION	LS	1	\$ 16,600.00	\$ 16,600.00
SUBTOTAL CONFLUENCE				\$ 303,101.00
* MERCADO				
CLEARING AND GRUBBING	ACRE	1	\$ 5,000.00	\$ 5,000.00
UNCLASSIFIED EXCAVATION (CIP)	CY	720	\$ 5.00	\$ 3,600.00
MUCK EXCAVATION	CY	117	\$ 8.00	\$ 936.00
EMBANKMENT (CIP)	CY	40	\$ 5.00	\$ 200.00
TOPSOIL	CY	27	\$ 7.00	\$ 189.00
SEEDING (NATIVE)/MULCHING/MULCH TACKIFIER	ACRE	0	\$ 3,000.00	\$ 150.00
AGGREGATE BASE COURSE (CLASS 6)	TON	621	\$ 15.00	\$ 9,315.00
HBP (GRADING SX)(75)(PG-58-28)	TON	373	\$ 50.00	\$ 18,650.00
18" CORRUGATED STEEL PIPE	LF	34	\$ 50.00	\$ 1,700.00
24" CORRUGATED STEEL PIPE	LF	38	\$ 55.00	\$ 2,090.00
INLET - TYPE R - L5 (10')	EA	2	\$ 3,500.00	\$ 7,000.00

**THREE SPRINGS, VILLAGE I - FILING I
DIA COST OF IMPROVEMENTS**

3/11/2004

DESCRIPTION	UNIT	QNTY	UNIT PRICE	TOTAL PRICE
INLET - TYPE R - L10 (5')	EA	2	\$ 4,000.00	\$ 8,000.00
CONCRETE SIDEWALK	SY	941	\$ 30.00	\$ 28,230.00
CONCRETE CURB RAMP	SY	27	\$ 60.00	\$ 1,620.00
CURB AND GUTTER - CITY OF DURANGO	LF	760	\$ 10.00	\$ 7,600.00
2" ELECTRICAL CONDUIT	LF	576	\$ 10.00	\$ 5,760.00
LIGHT STANDARD STEEL (40 FEET)	EA	2	\$ 2,000.00	\$ 4,000.00
CONCRETE FOUNDATION PAD	EA	2	\$ 750.00	\$ 1,500.00
LUMINAIRE HIGH PRESSURE SODIUM (400 WATT)	EA	2	\$ 500.00	\$ 1,000.00
SIGNAGE	LS	1	\$ 600.00	\$ 600.00
MOBILIZATION	LS	1	\$ 5,327.00	\$ 5,327.00
SUBTOTAL MERCADO				\$ 112,467.00
TOTAL SCHEDULE 1				\$ 2,528,926.00
SCHEDULE 2 - SANITARY SEWER				
8" SDR35 PVC MAIN	LF	2500	\$ 20.00	\$ 50,000.00
10" SDR35 PVC MAIN	LF	3700	\$ 30.00	\$ 111,000.00
12" SDR35 PVC MAIN			\$ 33.25	\$ -
15" SDR35 PVC MAIN	LF	3100	\$ 38.00	\$ 117,800.00
18" SDR35 PVC MAIN	LF	0	\$ 52.00	\$ -
MANHOLES COMPLETE	EA	40	\$ 2,200.00	\$ 88,000.00
WILSON GULCH CROSSING	EA	1	\$ 20,000.00	\$ 20,000.00
SEWER SERVICES COMPLETE	EA	30	\$ 750.00	\$ 22,500.00
BEDDING	CY	1800	\$ 7.00	\$ 12,600.00
TOTAL SCHEDULE 2				\$ 421,900.00
SCHEDULE 3 - WATER SYSTEM				
8" CL52 DIP WATER MAIN	LF	2800	\$ 23.00	\$ 64,400.00
10" CL52 DIP WATER MAIN	LF	4100	\$ 28.00	\$ 114,800.00
12" CL52 DIP WATER MAIN	LF	650	\$ 36.00	\$ 23,400.00
PIPE FITTINGS & THRUST BLOCK	EA	35	\$ 1,000.00	\$ 35,000.00
6" GATE VALVE	EA	0	\$ 650.00	\$ -
8" GATE VALVE	EA	15	\$ 800.00	\$ 12,000.00
10" GATE VALVE	EA	7	\$ 1,000.00	\$ 7,000.00
16" GATE VALVE	EA	8	\$ 1,200.00	\$ 9,600.00
VALVE VAULTS-COMPLETE	EA	2	\$ 7,000.00	\$ 14,000.00
WATER/SEWER CROSSINGS	EA	6	\$ 1,000.00	\$ 6,000.00
FIRE HYDRANT ASSEMBLIES, COMPLETE	EA	15	\$ 3,375.00	\$ 50,625.00
WATER SERVICE LINES-2" DIA.	EA	6	\$ 1,500.00	\$ 9,000.00
PRESSURE REDUCING STATION-COMPLETE	EA	1	\$ 70,000.00	\$ 70,000.00
WATER TANK AND TANK SITE	LS	1	\$ 725,000.00	\$ 725,000.00
16" FEED AND DISTRIBUTION LINE	LF	7650	\$ 54.00	\$ 413,100.00
BEDDING	CY	1600	\$ 7.00	\$ 11,200.00
AIR/VAC ASSEMBLIES	EA	6	\$ 25,000.00	\$ 150,000.00
GRANDVIEW BOOSTER STATION	LS	1	\$ 650,000.00	\$ 650,000.00
WATER TANK ROAD				
GRADING, CUT (NO OFF HAUL)	CY	6000	\$ 3.50	\$ 21,000.00
GRADING, FILL (NO IN HAUL)	CY	1000	\$ 5.00	\$ 5,000.00
SURFACE - 8" CL II/CVI SUBBASE	CY	1100	\$ 30.00	\$ 33,000.00
COD WATERLINE EXTENSION				\$ -
18" WATERLINE	LF	9300	\$ 70.00	\$ 651,000.00
WATER VALVES	EA	12	\$ 4,800.00	\$ 57,600.00
BENDS & FITTINGS	EA	30	\$ 2,700.00	\$ 81,000.00

**THREE SPRINGS, VILLAGE I - FILING I
DIA COST OF IMPROVEMENTS**

3/11/2004

DESCRIPTION	UNIT	QNTY	UNIT PRICE	TOTAL PRICE
PRESSURE RELIEF ASSEMBLY	EA	2	\$ 3,000.00	\$ 6,000.00
BEDDING	CY	1600	\$ 7.00	\$ 11,200.00
				\$ -
TOTAL SCHEDULE 3				\$ 2,424,125.00
SCHEDULE 4 - LANDSCAPING				
STONE SCULPTURE AT ROUND-A-BOUT	0	LS	\$ 20,000.00	\$ -
EARTHWORK FOR MEDIANS/PLANTING STRIPS	3750	CY	\$ 3.00	\$ 11,250.00
IMPORT TOPSOIL	2000	CY	\$ 8.00	\$ 16,000.00
SOIL PREPARATION	300	CY	\$ 3.00	\$ 900.00
DRAINAGE SYSTEM (WRAPPED 4" PERF. PIPE CONNECTED TO STORM SYSTEM)	1000	LF	\$ 30.00	\$ 30,000.00
CONCRETE TRAIL (10' WIDE)	0	SF	\$ 4.00	\$ -
FINE GRADING FOR TRAIL	0	CY	\$ 5.00	\$ -
STONE VENEER	0	FF	\$ 25.00	\$ -
DECORATIVE SAFETY RAILING	1	LS	\$ 50,000.00	\$ 50,000.00
STONE RETAINING WALLS	1	LS	\$ 60,000.00	\$ 60,000.00
SITE FURNISHINGS	0	LS	\$ 20,000.00	\$ -
BOARDWALK AT FOREBAY	0	LS	\$ 20,000.00	\$ -
STREETSCAPE PLANT MATERIALS				
DECIDUOUS TREES (2" CAL, 40' SPACING)	353	EA	\$ 450.00	\$ 158,850.00
SHRUBS/ORNAMENTALS (60 SHRUBS/100LF)	2800	EA	\$ 25.00	\$ 70,000.00
UPLAND SEED MIX	187980	SF	\$ 0.25	\$ 46,995.00
MULCH	563	CY	\$ 25.00	\$ 14,075.00
IRRIGATION SYSTEM	93990	SF	\$ 1.00	\$ 93,990.00
FOREBAY PLANT MATERIALS				
DECIDUOUS TREES (2" CAL)	60	EA	\$ 450.00	\$ 27,000.00
RIPARIAN SHRUBS	200	EA	\$ 35.00	\$ 7,000.00
UPLAND SEED MIX	75000	SF	\$ 0.25	\$ 18,750.00
WETLAND SEED MIX	60000	SF	\$ 0.30	\$ 18,000.00
MULCH	50	CY	\$ 25.00	\$ 1,250.00
IRRIGATION SYSTEM	75000	SF	\$ 0.35	\$ 26,250.00
TRAVERSE WASH PLANT MATERIALS				
DECIDUOUS TREES (2" CAL)	45	EA	\$ 450.00	\$ 20,250.00
RIPARIAN SHRUBS	200	EA	\$ 35.00	\$ 7,000.00
UPLAND SEED MIX	161515	SF	\$ 0.25	\$ 40,378.75
WETLAND SEED MIX	75721	SF	\$ 0.30	\$ 22,716.30
WETLAND PLUGS	1200	EA	\$ 3.50	\$ 4,200.00
MULCH	50	CY	\$ 25.00	\$ 1,250.00
IRRIGATION SYSTEM	161515	SF	\$ 0.35	\$ 56,530.25
TOTAL SCHEDULE 4				\$ 1,267,885.30
SCHEDULE 5 - OTHER UTILITIES				
ALL GAS MAIN AND SERVICE TRENCH, WITH CONDUIT AND COORDINATION WITH GAS COMPANY	LF	8000	\$ 4.00	\$ 32,000.00
ALL ELECTRICAL, TELEPHONE AND CABLE T.V. TRENCH, W/ 2-CONDUIT & W/COOR. WITH ELECTRIC, TELEPHONE, CABLE T.V. COMPANIES.	LF	20000	\$ 6.00	\$ 120,000.00
TOTAL SCHEDULE 5				\$ 152,000.00
SCHEDULE 6 - TRAVERSE WASH				
EXCAVATION	LS	1	\$ 75,000.00	\$ 75,000.00
DROP STRUCTURES	EA	5	\$ 40,000.00	\$ 200,000.00
RIP-RAP	LS	1	\$ 50,000.00	\$ 50,000.00

**THREE SPRINGS, VILLAGE I - FILING I
DIA COST OF IMPROVEMENTS**

3/11/2004

DESCRIPTION	UNIT	QNTY	UNIT PRICE	TOTAL PRICE
DRAINAGE CROSSINGS				
3 SPRINGS TRAIL 260 LF W/HEADWALLS	EA	1	\$ 350,000.00	\$ 350,000.00
CONFLUENCE 80 LF W/HEADWALLS		1	\$ 150,000.00	\$ 150,000.00
FOREBAY BASIN	LS	1	\$ 150,000.00	\$ 150,000.00
TOTAL SCHEDULE 6				\$ 975,000.00
SCHEDULE 7 - SITE IMPROVEMENTS-PARTIAL				
PED/BIKE UNDERPASS	EA	1	\$ 190,000.00	\$ 190,000.00
36"DIA. CMP STORM DRAIN & W/ STRUCTURES	LF	1500	\$ 75.00	\$ 112,500.00
EMERGENCY ROAD/ACCESS				
UNCLASSIFIED EXCAVATION (CIP)	CY	9000	\$ 6.00	\$ 54,000.00
EMBANKMENT (CIP)	CY	12800	\$ 8.00	\$ 102,400.00
AGGREGATE BASE COURSE (CLASS 2)	TON	4400	\$ 10.00	\$ 44,000.00
AGGREGATE BASE COURSE (CLASS 6)	TON	1500	\$ 15.00	\$ 22,500.00
12" CORRUGATED STEEL PIPE	LF	40	\$ 30.00	\$ 1,200.00
18" CORRUGATED STEEL PIPE	LF	266	\$ 45.00	\$ 11,970.00
12" FLARED END SECTION	EACH	2	\$ 240.00	\$ 480.00
18" FLARED END SECTION	EACH	8	\$ 215.00	\$ 1,720.00
CONSTRUCTION STAKING	LS	1	\$ 11,914.00	\$ 11,914.00
EMERGENCY ROAD SUBTOTAL				\$ 250,184.00
TOTAL SCHEDULE 7				\$ 552,684.00

**THREE SPRINGS, VILLAGE I - FILING I
DIA COST OF IMPROVEMENTS**

3/11/2004

DESCRIPTION	UNIT	QNTY	UNIT PRICE	TOTAL PRICE
TOTAL OF ALL SCHEDULES				
ROADS AND STREET DRAINAGE				\$ 2,528,926.00
SANITARY SEWER- NOT REQ'D FOR COD DIA			\$ -	NOT REQ'D
WATER SYSTEM			\$ -	\$ 2,424,125.00
LANDSCAPING			\$ -	\$ 1,267,885.30
OTHER UTILITIES-NOT REQ'D FOR COD DIA			\$ -	NOT REQ'D
MAIN DRAINAGE			\$ -	\$ 975,000.00
SITE IMPROVEMENTS - PARTIAL			\$ -	\$ 552,684.00
				\$ 7,748,620.30

COUNTY AGREEMENT

**THREE SPRINGS – GRVP, LLC
DEVELOPMENT**

October 25, 2004

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COUNTY AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2004, by and among the BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, the CITY OF DURANGO, and GRVP, LLC, a Colorado limited liability company.

ARTICLE I DEFINITIONS

"ADTs" – the total volume during a given time period (in whole days), greater than one day and less than one year, divided by the number of days in that time period.

"Bechtolt Studies" – the traffic studies performed by Bechtolt Engineering on behalf of Developer described as: Tierra Group Properties, Grandview Parcel, Planned Unit Development, Durango, Colorado, Traffic Impacts Analysis and Roadway Guidelines, Final Report, Bechtolt, July 2003; Tierra Group Properties, Grandview Parcel, Planned Unit Development, Durango, Colorado, Traffic Impacts Analysis and Roadway Guidelines Addendum One, October 2003; Three Springs Development (Grandview) Phase One Traffic, County Roadway Impact Assessment dated June 4, 2004 (copies of which have been submitted to and are on file with the County's Road and Bridge Department).

"Building Permit" – a permit to issued by the City pursuant to the laws of the City, which authorizes the Developer to proceed with new construction of residential or commercial units within the Project and Property.

"Certificate of Road Impact Fee" – Developer's certification of applicable Road Impact Fees related to a proposed Final Plat, as more fully described in Article VII B.

"City" – the City of Durango, Colorado, a Colorado home rule municipality.

"Conceptual Development Plan" – the Conceptual Development Plan submitted to the City for the Project dated September 18, 2003 and revised December 19, 2003, and any amendments thereto, which shall be attached to and incorporated as an exhibit into the Development Agreement and incorporated in this Agreement.

"County" – La Plata County, Colorado.

"C.R. 220 Contribution" – the one time lump sum payment to be paid by Developer to County as described in Article IV herein.

"Developer" – GRVP, LLC, a Colorado limited liability company, whose sole member is G F Properties Group, LLC, a Colorado limited liability company, and a wholly owned subsidiary of the SUIT.

“Development Agreement” – the Grandview Development Agreement currently being negotiated, by and among the City, Developer, the County and Mercy Medical Center of Durango, a Colorado nonprofit corporation, to which this Agreement (together with any future amendments) shall be attached as an exhibit and incorporated therein.

“Final Acceptance” – the County’s final acceptance of the Road Improvements at the end of the Warranty Period as described in Article V (H)(4) herein.

“Final Plat” – a map establishing real estate interests for recording with the La Plata County Clerk and Recorder, which reflects the final development configuration for which approval from the City has been obtained. For purposes of this Agreement, the term shall not include bulk plats or plats created for purposes of conveying undeveloped parcels to third parties for subsequent development or parcels for which there is no final development plan.

“Impact Assessment” – the Three Springs Development (Grandview) Phase One Traffic, County Roadway Impact Assessment dated June 4, 2004, which is expressly incorporated by reference herein.

“Preliminary Acceptance” – The County’s preliminary acceptance of the Road Improvements as described in Article V (H)(1) herein.

“Preliminary Notice” – a request for inspection of the completed Road Improvements by the Developer to the County.

“Project” – Developer’s proposed project referred to as “Three Springs” which contemplates a maximum of two thousand, two hundred eighty-three (2,283) residential units and eight hundred sixty-four thousand (864,000) square feet of commercial buildings and ancillary facilities on the Property, as more fully described in the Conceptual Development Plan, and the initial phase of development of a Regional Medical Center on the Regional Medical Center Property, including a hospital and medical office building, as defined more fully in the Mercy Regional Medical Center Phase I Planned Development Agreement recorded in the records of the County Clerk and Recorder on April 29, 2004 at Reception No. 883533.

“Property” – the real property owned by Developer, consisting of approximately six hundred twenty-two (622) acres of land situated near the eastern border of the City in the Grandview area of La Plata County and more particularly described as Tracts 3, 4 and 5 of the Three Springs Minor Subdivision Final Plat, County of La Plata State of Colorado, according to the recorded Plat thereof filed for record, April 29, 2004, under Reception No. 883523 in the records of the La Plata County, Colorado Clerk and Recorder’s office.

"Regional Medical Center" – a regional medical center owned by Mercy Medical Center of Durango, a non-profit entity, currently being constructed on property formerly owned by Developer adjacent to the Property.

"Regional Medical Center Property" – the real property previously owned by Developer that was conveyed to Mercy Medical Center of Durango pursuant to that certain Warranty Deed dated April 28, 2004 and recorded in the records of the County Clerk and Recorder at Reception No. 883529 and that real property previously owned by Developer that was conveyed to DRF Durango, LLC pursuant to that certain Warranty Deed dated April 28, 2004 and recorded in the records of the County Clerk and Recorder at Reception No. 883528, collectively consisting of approximately 60 acres.

"Road Impact Fees" – those fees described in Article VII.

"Road Improvements" – all County road improvements specifically described in Article V of this Agreement.

"Road Improvement Fund" – the fund established by the County and in which all fees described in Articles IV and VII collected by the County pursuant to this Agreement shall be deposited. The fund shall be administered in accordance with C.R.S. § 29-1-803 *et seq.* and all other applicable laws for the collection and maintenance of public funds.

"Security" – the irrevocable letter of credit issued by a Colorado branch of a banking institution or performance bond issued by an approved corporate surety licensed to do business in the State of Colorado securing Developer's performance of the installation and construction of the Road Improvements pursuant to Article V herein.

"SUIT" – the Southern Ute Indian Tribe, a federally recognized Indian tribe that is organized under a constitution, approved by the Secretary of the Interior, pursuant to the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461, *et seq.*).

"Surcharge IGA" – the Intergovernmental Agreement and Memorandum of Understanding [Mercy Medical Center Surcharge Permit] and Pre-Annexation Agreement entered into by and between the County, City, Tierra Group, LLC and Mercy Medical Center of Durango on December 3, 2003.

"Tierra Group, LLC" – a Colorado limited liability company, a wholly owned subsidiary of the SUIT and Developer's predecessor in interest with respect to the Property and the Surcharge IGA.

"Warranty Period" – the two year period following the County's Preliminary Acceptance of the completed Road Improvements.

ARTICLE II RECITALS

A. C.R.S. § 43-2-147 allows the County to and describes the manner in which the County shall regulate vehicular access to and from any public highway under its jurisdiction and from or to property adjoining a public highway in order to protect the public health, safety and welfare, to maintain smooth traffic flow, to maintain highway right-of-way drainage and to protect the functional level of public highways. C.R.S. § 29-20-104 allows the County to plan for and regulate the use of land within its jurisdiction.

B. Developer seeks to develop the Property in the manner consistent with the Conceptual Development Plan. It is anticipated that Developer will construct the Project over the period of time reflected in the Development Agreement. However, development of Phase 1 of the Project (inclusive of the initial phase of development of the Regional Medical Center Property) has been limited by the traffic capacity of the signalized intersection planned at Three Springs Boulevard and Highway 160 near County Road 233.

C. The City has approved annexation of the Property and the Regional Medical Center Property, as requested in petitions for annexation submitted by Tierra Group, LLC, and the City has recorded such annexation documents.

D. The County, the City, Mercy Medical Center of Durango and Developer's predecessor in interest, Tierra Group, LLC, entered into the Surcharge IGA to provide for a transfer of limited land use jurisdiction from the County to the City for purposes of allowing certain surcharge activity to occur on the Tierra Property (as defined therein) prior to annexation, subject to certain specified conditions. The County was willing to enter into the Surcharge IGA (i) in exchange for the City's assurances that the annexation agreement or other appropriate documents would, in a manner consistent with Colorado Constitutional considerations set forth in C.R.S. § 29-20-203(1), sufficiently address the impacts of the annexation and attending development on County roads and adjacent properties within the County's land use jurisdiction and (ii) in recognition of the importance of a new hospital facility to the health, safety and welfare of all inhabitants of the County. The City agreed to use its "best efforts" to require Mercy Medical Center of Durango and Tierra Group, LLC to mitigate the impact of proposed development of the Tierra Property. The parties acknowledge that partial consideration for this Agreement are the mutual covenants, conditions and agreements set forth in the Surcharge IGA; particularly the County's limited waiver of its land use jurisdiction in exchange for the City's best efforts to require mitigation efforts on behalf of Mercy Medical Center of Durango and Tierra Group, LLC. Moreover, in consideration of the Agreements of the City, and Developer contained herein; the County agrees that it shall not seek review of the City's annexation of the Property pursuant to C.R.S. § 31-12-116.

E. The Bechtolt Studies reveal that the Project will generate traffic that will impact surrounding County roads, particularly County Roads 234, 235 and 240. The County and Developer acknowledge that the ultimate product mix of Project components

may differ from those referenced in the Bechtolt Studies based on market developments; however, the parties also recognize that with respect to Developer's Phase 1 and the initial phase of development of the Regional Medical Center Property, impact costs per ADT reflected in the Bechtolt Studies, particularly those reflected in the Impact Assessment, will be unaffected by such product mix changes for purposes of this Agreement.

F. To protect the health, safety and welfare of the community, the County seeks to mitigate traffic congestion and operational or law enforcement issues that might arise as a result of the Project with respect to County Roads 220 and 233.

G. The County recognizes that several of the affected County roads are presently below County standards and that the responsibility for improving the deficiencies in such roads is the responsibility of the County. However, the County seeks to avoid further degradation of its roads particularly if such degradation results in diminished safety for the traveling public or a reduction in the level of service.

H. Notwithstanding Recital G herein, Developer and County agree that impacts directly attributable to the Project will necessitate a variety of on and off site transportation facility improvements to the affected County roads and that the cost of these improvements is properly attributable to the development that benefits from such transportation facility improvements. However, Developer should not be responsible for more than its proportionate share of such improvements. As such, the parties have entered into negotiations to ensure that there is an essential nexus and a rough proportionality between the mitigation measures described herein and the impact of the land use development proposed under the Development Agreement as required by C.R.S. § 29-20-203.

I. Developer and County have negotiated the mitigation of such impacts and wish to set forth their agreements and understandings with respect to the manner in which the impact of the Project on County roads will be mitigated and the effect of the future adoption, if any, of a County road impact fee program. The Impact Assessment (referenced above) provides a detailed description of the assumptions regarding costs for improvements, estimated traffic to be generated by the Project and the methodology upon which the Developer's proportional share of roadway costs has been determined.

J. The County recognizes and acknowledges that the monies collected hereunder must be collected and spent in a manner consistent with the accounting practices set forth in C.R.S. § 29-1-801 *et seq.* and that such monies may only be spent on facilities that are directly and reasonably related to the mitigation of impacts related to growth attributable to the Project.

K. The County is entering into this Agreement for the purpose of protecting the health, safety and general welfare of the citizens of La Plata County, Colorado.

AGREEMENT

Therefore to facilitate development of the Property and in consideration of the mutual obligations and benefits set forth in the Recitals and contained in this Agreement and Article III hereof and for other good and valuable consideration, the receipt of which is acknowledged, Developer and the County agree as follows:

ARTICLE III INCORPORATION OF RECITALS

The foregoing recitals are true and correct and are hereby incorporated by the parties as part of this Agreement as if fully set forth herein.

ARTICLE IV NEGOTIATED CONTRIBUTIONS

Developer agrees to the negotiated C.R. 220 Contribution set forth in this Article IV in accordance with the following terms and conditions.

A. County Road 220. In furtherance of the health, safety and welfare of the community, Developer shall make a one-time contribution of Fifty Thousand Dollars (\$50,000.00) to the County for the ancillary impacts of the Project to County Road 220 within ten (10) days of the date of execution of this Agreement.

B. Road Improvement Fund. The C.R. 220 Contribution described in the foregoing Article IV (A) shall be deposited by the County in the Road Improvement Fund and may be used for purposes of mitigating the impacts of the Project on County Road 220, as the County deems reasonable and proper. In the event that the C.R. 220 Contribution is not fully expended on the measures necessary to mitigate the described impacts on County Road 220, Developer agrees that the County may utilize the remainder to mitigate impacts of the Project on other affected County roads but Developer shall receive a credit of such remainder funds against the Road Impact Fees that would be otherwise payable by Developer at the recordation of Developer's first Final Plat for Phase 2 of the Project. The County shall maintain records of its use of all portions of the C.R. 220 Contribution.

ARTICLE V SPECIFIC ROAD IMPROVEMENTS AND ONGOING OBLIGATIONS

Developer agrees to the obligations to perform the specific work created and/or described in this Article V.

A. Description of Specific Improvements. Developer shall design, obtain right-of-way (the width of which, when combined with existing right-of-way, if any, shall be no less than 75 feet) for, survey, monument, file a deposit plat and construct the following specific Road Improvements:

1. County Road 235 – Reconstruct and pave approximately 1.1 miles of gravel road to a width of 34 feet, which would be the width of the finished gravel Class 6 surface (30 feet of pavement, including two 12-foot lanes and two 3-foot paved shoulders, plus two 2-foot gravel shoulders); beginning at the point described as the intersection of County Roads 235 and 234 and connecting to the Property.

2. County Road 235 and County Road 234 Intersection – Design, obtain right-of-way, monument, file a deposit plat and construct and pave an eastbound to northbound left-turn acceleration lane and southbound to westbound right-turn deceleration lane at the intersection of County Road 235 and County Road 234.

B. Date of Commencement and Completion. Weather permitting, the Developer shall commence the Road Improvements described in Article V within thirty (30) days of the issuance of the first Building Permit for any units in Phase 2 of the Project by the City and shall diligently pursue the same to completion. In no event shall the Road Improvements referenced in Article V be completed later than the date of issuance of the first certificate of occupancy for any structure located on any portion of Phase 2 of the Project. In the event that other private development occurs along County Roads 234 and 235 that necessitates completion of all or a portion of the improvements described in Article V (A) by another private developer, Developer shall be excused from performing that portion of the work performed by the intervening developer but agrees that it shall participate in a fair-share reimbursement of the costs of the intervening developer consistent with the provisions of C.R.S. § 30-25-133(12) and the County's subdivision regulations providing for such reimbursement at the time of final approval of Phase 2 of the Project and provided the costs of such improvements qualify for reimbursement under such regulations. In determining the amount that Developer might be required to reimburse the intervening developer, Developer shall be given credit for the actual costs previously incurred by Developer in the acquisition of right-of-way for County Roads 234 and 235 consistent with the provisions of Article V (L) herein.

C. Standards. All Road Improvements shall be performed by Developer, its successors or assigns in conformance with all County standards and specifications in effect at the time of commencement of construction including, but not necessarily limited to those standards and conditions set forth in Sections 82-161 to 166 and Chapter 74 of Subpart B of the La Plata County Code, and in substantial accordance with detailed plans and specifications submitted to and approved by the County Engineer in writing; provided, however, that the width of the improved County Road 235 shall be as described in Article V(A)(1). A professional engineer registered in the State of Colorado shall prepare the plans and specifications. The plans must include the following statement: "These construction plans for (name of subdivision, development or project) were prepared by me (or under my direct supervision) in accordance with the requirements of those standards and conditions set forth in §§ 82-161 to 166 and Chapter 74 of Subpart B of the La Plata County Code." and must state the name of the engineer and the name of firm. The statement shall be signed and stamped by the Registered Professional Engineer who prepared or directed preparation of the construction plans. Unless otherwise

identified or noted, all plans and specifications submitted shall be assumed to comply with the provisions of this Agreement and the La Plata County Code. The County shall not be responsible for the accuracy and adequacy of the plans and specifications and, through acceptance thereof, assumes no responsibility for the completeness and/or accuracy of the plans and specifications. The plans and specifications shall be considered valid for two (2) years from the date of approval by the County Engineer, after which time such plans shall be void and will be subject to re-review and re-acceptance by the La Plata County Engineer. The County shall not unreasonably withhold approval of such plans. There shall be no substantial changes in or deviations from the plans except with the express written consent of the County Engineer. Upon approval of the plans pertaining to the Road Improvements, the County Engineer shall issue a Notice to Proceed to Developer. Developer shall give the County no less than seventy-two (72) hours' written notice prior to the commencement of performance of any Road Improvements. Developer warrants that the Road Improvements will be installed in a good and workmanlike manner and in substantial compliance with the plans and specifications and requirements of this Agreement and shall be substantially free from defects in materials and workmanship. A default of this Agreement will exist if (i) Developer fails to construct the Road Improvements in substantial compliance with the plans and specifications; or (ii) Developer fails to complete construction of the Road Improvements by the agreed upon completion date; or (iii) Developer fails to cure any noncompliance specified in any written notice of noncompliance issued by the County; (iv) if Developer fails to keep the Security in full force and effect for the time period required. Notwithstanding the foregoing, no default of this Agreement shall be deemed to occur if the County fails to notify Developer of such default within the applicable statute of limitations period that would otherwise govern the commencement of an action relative to matters giving rise to the alleged default. Additionally, Developer's obligations under Article V shall be suspended and the timing for such performance shall be extended during those periods when Developer's performance is prevented as a result of actions or circumstances beyond the control of Developer, including, without limitation, strikes, accidents, terrorist activity, labor shortages, acts of God, unforeseeable weather conditions, governmental action or unreasonable governmental delay, and other force majeure causes.

D. Cost of Improvements and Security. Upon approval by the County Engineer of plans for any Road Improvements required under this Agreement and prior to commencement of construction, Developer shall furnish to the County a good faith estimate of the total cost to Developer of installing and/or constructing the Road Improvements which the County must accept as valid, accurate and fair. The sole purpose for such estimate shall be to provide a basis for establishing the amount of the Security required herein and shall not be construed as a warranty or guarantee of actual improvement costs or quantities. In order to secure the performance of the installation and construction of the Road Improvements, Developer shall provide the Security to the County, prior to the issuance of a Notice to Proceed, in an amount equal to one hundred ten percent (110%) of the estimated total cost required to perform the proposed Road Improvements. The Security shall insure that the Developer will comply with all County standards and specifications, the submitted plans as approved by the County and the

terms of this Agreement and shall ensure recovery by the County of any expenses incurred within the Warranty Period of the Road Improvements or applicable component thereof, up to the amount of the Security due to failure of the Developer to comply with the provisions of this Agreement, or to otherwise cause expense to the County as a result of the work performed. If a default by Developer exists, the County shall be entitled to (i) make a draw on the Security for the amount reasonably determined by the County to be necessary to cure the default in a manner consistent with the approved plans and specifications up to the face amount of the Security and (ii) sue the Developer for recovery of any amount necessary to cure the default over and above the amount available under the Security.

E. Revegetation and Weed Control. Developer recognizes the potential harm of disturbed soil and the nuisance caused by the proliferation of undesirable plants therein. Developer shall be responsible for all work and costs associated with the reseeding and/or weed control of the improved portions of the County roads for one year following the completion of the Road Improvements. Such work shall be completed consistent with the standards set forth in Section 58-63 of the La Plata County Code pertaining to the control of undesirable plants on public rights-of-way except that any violation of such article shall be the financial responsibility of Developer during the course of construction and through Final Acceptance.

F. Licenses and Utilities. Developer shall obtain and the County shall not unreasonably withhold issuance of a separate license to work in the County right of way from the County prior to commencing construction of any portion of the Road Improvements, and Developer shall, with all due diligence, investigate, contact and cooperate with any and all utilities, public or private, and determine whether any of the aforesaid have lines, pipes or other facilities located in the right of way and shall avoid destruction or damage of such facilities. In the event that such damage or destruction occurs, Developer shall indemnify the County for all costs related thereto as set forth in Article V (K).

G. Inspection. At all times during the term of this Agreement, the County shall have the right, but not the duty, to inspect materials and workmanship related to the Road Improvements. Following written notice from the County Engineer of lack of conformance with the approved construction plans Developer shall, at Developer's own cost, make all corrections and replace any materials necessary to bring such Road Improvements into conformity with County standards and specifications. In order to be effective under this Agreement, any such notice from the County Engineer of nonconformance must be issued prior to expiration of the Warranty Period following the County's Preliminary Acceptance of the applicable component of the Road Improvements. If corrections are not made within thirty (30) days of having received notice of lack of conformance from the County Engineer, such shall be considered a breach of this Agreement by Developer and the County shall have the right, but not the duty, to exercise any or all of the remedies set forth in Article XVI hereunder or to draw upon the Security discussed in Article V (D) herein.

H. Acceptance of Road Improvements.

1. **Preliminary Acceptance.** Upon satisfactory completion of the Road Improvements, Developer shall request Preliminary Acceptance thereof by the County in accordance with the following provisions:

(a) Upon completion of the installation or construction of the Road Improvements, Developer shall deliver to the County Engineer the following: (i) Unless waived by the County Engineer, record drawings of the Road Improvements certified by a Colorado professional engineer that the Road Improvements have been completed in accordance with the plans and specifications approved by the County and the terms of this Agreement, including those standards and conditions set forth in Sections 82-161 to 166 and Chapter 74 of Subpart B of the La Plata County Code, or amendments thereto as applicable, and that it knows of no defects in the improvements, (ii) Certification by Developer that it knows of no defects in the Road Improvements and that the Road Improvements are free and clear of any mechanics or materialman's liens, and (iii) Preliminary Notice for inspection of the completed Road Improvements.

(b) The County shall compare the certified record drawing information with the approved construction drawing and shall inspect the completed Road Improvements. If the County Engineer finds that the specified improvements have been completed substantially in accordance with the plans and other requirements of this Agreement, the County Engineer shall issue a letter to Developer and the County evidencing Preliminary Acceptance.

(c) If, upon inspection, the County Engineer finds that the Road Improvements have not been completed substantially in accordance with the plans and other requirements of this Agreement, or if such improvements are found to contain significant defects, the County Engineer shall issue to Developer a written notice of noncompliance specifying the respects in which the improvements have not so been completed or what defects have been found. Developer shall thereon be required to take such action as is necessary to cure any noncompliance or defective condition before resubmitting the Road Improvements for Preliminary Acceptance. Upon curing the same, Developer shall deliver to the County Engineer a new Preliminary Notice. Upon such delivery, the foregoing provisions of this Article V(H)(1) shall apply anew with respect to the new Preliminary Notice.

2. **Partial Release of Security.** At the time that the County Engineer issues a letter of Preliminary Acceptance of the Road Improvements, the principal amount of the Security shall be reduced to an amount equal to 15% of the estimated and approved cost of such component of Road Improvement work. As components of Road Improvements survive the Warranty Period, the principal amount of the Security shall be reduced by 110% of the estimated and approved cost of such component as reasonably determined by the County.

3. **Repair Prior to Final Acceptance.** Until Final Acceptance by the County of the Road Improvements, Developer shall, at Developer's expense, make all needed

repairs or replacements to the Road Improvements required on account of defects in design, materials or workmanship.

4. **Final Acceptance.** At the end of the Warranty Period, Developer shall be entitled to request Final Acceptance thereof by the County in accordance with the following provisions:

(a) No earlier than 60 days or later than 30 days prior to the expiration of the Warranty Period, Developer shall give Final Notice to the County Engineer requesting a final inspection of the Road Improvements.

(b) The County shall inspect the completed Road Improvements and if the County Engineer finds that the specified improvements are substantially free of defects in materials and workmanship or have been repaired and to the extent required in this Agreement, the County Engineer shall issue a letter to Developer and the County evidencing Final Acceptance.

(c) If, upon inspection, the County Engineer finds that the Road Improvements are not substantially free of defects in materials and workmanship or have not been repaired to the extent required in this Agreement, the County Engineer shall issue to Developer a written notice of noncompliance specifying what defects have been found or to what respect the improvements have not been repaired. Developer shall thereon be required to take such action as is necessary to cure any noncompliance or defective condition before resubmitting the Road Improvements for Final Acceptance. Upon curing the same, Developer shall deliver to the County Engineer a new Final Notice. Upon such delivery, the foregoing provisions of this Article V (H)(4) shall apply anew with respect to the new Final Notice.

(d) Approval and/or acceptance of any Road Improvements by the County does not constitute a waiver by the County of any rights it might have on account of any defect in or failure of the Road Improvement that is detected or which occurs after approval and/or acceptance.

5. **Final Release of Security.** At the time that the County Engineer issues a letter of Final Acceptance of the Road Improvements, the County shall issue a written release of the Security.

I. **Work by the County.** The County reserves the right to perform work or maintenance operations on the segments and entirety of the County roads described in Article V. Whenever possible, the County will coordinate its work or maintenance operations with Developer. The County shall be responsible for any damage to such roads that may occur as a result of the County's maintenance or repair of such roads.

J. **Dedication.** All Road Improvements shall be dedicated to the County.

K. **Immunity and Insurance.** Developer acknowledges that this Agreement shall not alter or diminish the County's statutory immunity from suit with respect to the

condition of the County roads. Developer further acknowledges that such immunity does not apply to Developer. During construction of the Road Improvements and up through the date of Final Acceptance of Road Improvements, Developer agrees to obtain and maintain general liability insurance naming La Plata County as an additional insured in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) per person and Six Hundred Thousand Dollars (\$600,000.00) in aggregate. Developer shall provide proof of insurance in full force and effect to the County within thirty (30) days of the issuance of the first Building Permit for units within Phase 2 of the Project and on an annual basis thereafter during which Road Improvements are being constructed by Developer. Failure to provide proof of insurance shall constitute a default of the terms of this Agreement. Such policy shall provide that the County shall be notified at least thirty (30) days in advance of any reduction in coverage, termination or cancellation of the policy. Such notice shall be sent by certified mail to the County Engineer and County Risk Manager, return receipt requested. Developer agrees that any contractors engage by or for Developer to construct the Road Improvements shall maintain public liability coverage in not less than those amounts described herein and shall maintain worker's compensation insurance.

L. Indemnification. Developer shall indemnify and save harmless the County from any and all suits, actions, claims, judgments, obligations or liabilities of every nature and description which arise from any event or occurrence prior to the date of Final Acceptance and which are caused by, arise from, or are on account of the construction and installation of the Road Improvements. This indemnification shall not apply to claims arising from the negligent acts or omissions of the County. Owner shall pay any and all judgments rendered against the County on account of any such suit, action or claim together with all reasonable expenses and attorney's fees incurred by the County in defending such suit, action or claim. The County shall, within twenty (20) days after being served with any such claim, suit or action notify the Owner of its reliance upon this indemnification and provide Owner with a copy of all documents pertaining to the claim or cause of action. This indemnity provision shall be in addition to any other liability which Owner may have. This provision is not, as to third parties, a waiver of any defense or immunity otherwise available to the County in defending any action on behalf of the County and the County shall be entitled to assert in any action every defense or immunity that the County could assert in its own behalf.

M. Acquisition of Right of Way.

1. County's Written Opinion. Within 90 days from the date of this Agreement, the County shall provide Developer with a written opinion describing the scope and dimensions of currently existing rights-of-way owned by the County in relation to County Road 235 in its entirety and to County Road 234 within 2000 feet in both directions of the 234/235 Intersection. The Parties recognize that such written opinion shall constitute the County's best judgment as to such matters.

2. County Cooperation. In the event that additional right-of-way must be acquired for Developer to complete any of the Road Improvements, the Developer shall

negotiate in good faith with the owner of such property. The County shall use reasonable efforts to cooperate with and to assist Developer in such acquisition. In the event that sufficient right of way cannot be obtained without the use of eminent domain, the County shall, to the extent permitted by law, exercise reasonable efforts to obtain such property through its eminent domain powers. Any right-of-way so obtained, whether by the County or the Developer, shall be in fee or in the form of an easement reasonably acceptable to the County Attorney and conveyed to the County and shall be paid for by Developer; provided that the width of any such right-of-way shall not exceed that reasonably necessary to contain and maintain the required and necessary improvements, and which width shall not exceed the County standards and specifications in force at the time that right-of-way is first acquired for Road Improvements under Article V(A). In the event that neither Developer nor the County is able to acquire needed right-of-way for the Road Improvements described in Article V, Developer shall be relieved of the obligations in such Article as they relate to County Road 235, and the County agrees to cooperate with Developer in approving and obtaining, at Developer's expense, alternative secondary access to the Project the design and construction of which shall be subject to the applicable standards and other operative provisions of this Article 5.

N. Maintenance of County Road 235. The Road Improvements to County Road 235 shall include the obligation of maintenance for the entirety of the road by the Developer during periods when active, roadway reconstruction and paving are underway. The Developer-maintenance time period shall commence upon issuance of notice to proceed by the County Engineer and shall terminate upon Preliminary Acceptance by the County Engineer. As used herein, the term "maintenance" shall include but shall not necessarily be limited to the application of gravel, snow removal, signage, sign maintenance, blading, shoulder repairs and the cleaning of drainage ditches and culverts. If at any applicable time the County deems emergency repairs to County Road 235 to be necessary, Developer shall complete such repairs within seventy-two (72) hours after notification by the County Engineer. Until such repairs are completed, Developer shall post signs or implement adequate temporary measures to protect the public safety. If Developer is unable to make the required repairs during such seventy-two (72) hours, the County may make the repairs and shall be reimbursed by Developer within thirty (30) days for costs thereof. Nothing set forth in this Article V shall be construed as prohibiting, restricting or in any way limiting the County's ability or right to issue any form of permit or license to other parties to work in the right of way or for access onto the right of way.

O. Payment of Costs. Developer shall be responsible for all costs associated with the Road Improvements, including the costs of right-of-way acquired by the County under Article V (L), (including all costs and reasonable attorneys fees associated therewith) and shall pay such costs within sixty (60) days of its receipt that the same are due from the County.

**ARTICLE VI
COUNTY ROAD 233/HIGHWAY 160 INTERSECTION IMPROVEMENTS**

Pursuant to the Development Agreement, Developer, at its own expense, shall perform the improvements to the U.S. Highway 160 and Three Springs Boulevard intersection as required in the Development Agreement and in accordance with the State Highway Access Permit issued by the Colorado Department of Transportation issued on March 16, 2004. Upon completion of such facilities, the County will take such steps as are necessary to vacate that portion of County Road 233 which is no longer useable or needed as a result of the improvements. The County shall continue maintenance of the remainder of such road until such time as the road, or any additional portion thereof, is annexed by the City.

**ARTICLE VII
NEGOTIATED ROAD IMPACT FEES**

A. Necessity of Road Impact Fees. County and Developer have determined that specific types of land use within the Project will create impacts on County roads that will not be mitigated by the measures set forth in Articles IV, V or VI hereof and therefore the Road Impact Fees described in this Article VII are proper and necessary. Developer has further agreed with Mercy Medical Center of Durango to assume responsibility for, and County and Developer hereby acknowledge Developer's commitment to assume responsibility for, those Road Impact Fees under this Agreement attributable to that portion of the Project involving the initial phase of a Regional Medical Center on the Regional Medical Center Property, including a hospital and medical office building. Such Road Impact Fees shall be allocated, reserved and utilized to widen County Roads 234 and 240 and to design and construct auxiliary lanes at the intersection of County Roads 234/240, all as more particularly described in the Impact Assessment. The parties recognize that impact fees are not always a reliable source of funds and that the County's ability to actually perform such work may be limited or hampered by reasons beyond its control. However, the County agrees to exercise good faith in its efforts to carry out the intent of this Agreement and to perform such work to the extent that monies (including funds attributable to fees collected pursuant to this Article VII) are available and appropriated to mitigate deficiencies in said roads and to complete the work. The County shall control the sequencing and timing of such work and Developer hereby waives its rights, if any, to insist upon completion of the work or to dictate the manner, sequencing and timing of the same.

B. Road Impact Fees Calculation and Payment. Based upon certain agreed upon assumptions in the Impact Assessment, the Developer and County have estimated that \$ 2,275,892 will be Developer's proportionate share of Road Impact Fees for Phase 1 of the Project, inclusive of the initial phase of the Regional Medical Center. The actual amount of fees due and owing shall be calculated according to the type of land uses in each Final Plat proposed for final approval and approved by the City and the costs set forth in Table 7 of the Impact Assessment. Developer shall pay the County the actual

amount of Road Impact Fees due and owing for the prescribed land use types reflected on each Final Plat prior to recordation of the same.

1. Calculation Process. Following the submission of a proposed Final Plat for City approval, but prior to the City's execution of the same, Developer shall submit to the County Director of Community Development, or, in the absence of the County Director of Community Development, the County Manager, his designee, the County Finance Director or other County designee, Developer's certification of the applicable Road Impact Fee ("Certificate of Road Impact Fee"). The Certificate of Road Impact Fee shall include a copy of the proposed Final Plat, a statement of the Road Impact Fee then payable, a written explanation of how the amount was computed, a check payable to the County for the amount set forth in the statement of Road Impact Fee then payable, and a receipt space on which the applicable County official having received the same shall sign and acknowledge such receipt. Within five (5) business days of the submission of the Certificate of Road Impact Fee, the County Director of Community Development, or, in the absence of the County Director of Community Development, the County Manager, his designee, the County Finance Director or other County designee, shall provide to Developer a written objection, if any, to Developer's computation, together with an alternative payment computation and a written explanation supporting the same. Should the County not provide the Developer with its alternative computation and written explanation in a timely manner, the Developer's computation shall be deemed correct, and the County shall thereafter have an affirmative obligation to execute the Final Plat, as more fully set forth below. In the event of a discrepancy in computation between the Developer and the County, those Parties, recognizing that time is of the essence, shall meet promptly to resolve the matter. In the event that a mutually acceptable solution cannot be reached, either Party may initiate dispute resolution proceedings as set forth in Article XVI hereof.

2. County Execution of Final Plat. Unless and until the Road Impact Fee provisions of this Article VII become inoperative under Article IX hereof, the City shall insist upon each Final Plat bearing the following language: "It is hereby acknowledged that La Plata County has received payment of the applicable Road Impact Fee to be paid to La Plata County for this plat consistent with the terms and provisions of that certain County Agreement by and among La Plata County, the City of Durango, and GRVP, LLC dated _____, 2004 and recorded in the real property records of La Plata County at Reception No. _____, on _____, 2004. Signed: County Authorized Representative." As a condition precedent to the City's final execution of the Final Plat and recordation of the same, Developer shall obtain the signature of the County's Director of Community Development, or in the absence of the County's Director of Community Development, the County Manager, his designee, the County Finance Director or other County designee, on such Final Plat acknowledgement. The signature shall be promptly issued by the applicable County official: i) if the Certificate of Road Impact fee is deemed correct, as set forth above; or ii) upon resolution of a dispute as to the applicable Road Impact Fee, as set forth above.

Payment of the Road Impact Fees attributable to the initial phase of the Regional Medical Center shall be due and payable at recordation of Developer's next Final Plat and shall specifically include the Road Impact Fees for the 208,000 sq. ft. hospital, 153,242 sq. ft. medical office building and 5,747 sq. ft. day care facility. The County shall deposit Road Impact Fees into the Road Impact Fund in a clearly specified account and shall administer such funds in accordance with C.R.S. § 29-1-803 *et seq.* and all other applicable laws for the collection and maintenance of public funds. Should Mercy Medical Center and Developer elect to construct a day care facility within the Property in lieu of the site currently platted on the Regional Medical Center Property, County shall proportionately credit Developer any Road Impact Fees paid or owing related to the Mercy Medical Center 5,780 sq. ft. day care facility.

ARTICLE VIII EQUITABLE STANDARDS

Developer and the County acknowledge and agree that:

A. The C.R. 220 Contribution, Road Improvements and Road Impact Fees will serve Phase I of the development contemplated by the Development Agreement;

B. The C.R. 220 Contribution, Road Improvements and Road Impact Fees established by this Agreement are reasonable, fair and equitable based upon the specific findings quantifying the impacts of the land use development proposed under the Development Agreement and the Bechtolt Studies;

C. There is an essential nexus between the C.R. 220 Contribution, Road Improvements and the Road Impact Fee amounts and the impact of the land use development proposed under the Development Agreement;

D. The C.R. 220 Contribution, Road Improvements and Road Impact Fee amounts are roughly proportional to the impacts of the land use development proposed under the Development Agreement; and

E. All interest accrued or earned on funds held in the Road Improvement Fund shall be the property of the County to be utilized by the County to further mitigate impacts of the Project on County roads or to cure any default of Developer hereunder.

ARTICLE IX COUNTY ROAD IMPACT FEE PROGRAM

To the extent legally permissible, during the term of this Agreement the County shall use reasonable efforts to adopt a road impact fee program applicable to those eligible properties upon which the County can legally impose an impact fee program pursuant to constitutional and statutory parameters and which are generally identified as being within the Florida Road, Florida Mesa, and Bayfield Land Use Districts and the Southeast La Plata Land Use District. The precise scope of the road impact fee program

will be addressed in the course of studies anticipated to be commenced by the County in the near future. Following the completion of such studies, and in the course of developing the road impact fee program, the County agrees in good faith to seek a cooperative arrangement with the City in which the road impact fee program can be extended to the Project in lieu of the Road Impact Fees described in Article VII hereof.

A. Failure of County To Adopt General Road Impact Fee Program. In the event that the County fails to adopt a road impact fee program for properties within the Florida Road, Florida Mesa, and Bayfield Land Use Districts and the Southeast La Plata Land Use District within five (5) years of the effective date of this Agreement, the obligation of Developer and its successors and assigns to pay the Road Impact Fees, other than those already paid, under this Agreement shall terminate and the provisions of Article VII shall be of no further force and effect. Notwithstanding the foregoing, nothing contained in this Article IX or the County's adoption of an impact fee program shall affect Developer's other obligations contained in this Agreement and, more specifically, the Developer's obligations under Articles IV, V and VI herein.

B. Implementation of Joint County/City Road Impact Fee Program. Should the County implement such a road impact fee program within five (5) years of the effective date of this Agreement and should that road impact fee program be extended to annexed areas within the Grandview Area Plan through a cooperative arrangement with the City, then the obligation of Developer and its successors and assigns to pay the Road Impact fees, other than those already paid, under this Agreement shall terminate and the provisions of Article VII shall be of no further force and effect; provided that, Developer shall be required to pay the applicable road impact fees required under the cooperative arrangement between the City and the County.

C. Implementation of County Road Impact Fee Program Without City. Should the County implement such a road impact fee program, but should that program not be extended to the annexed areas within the Grandview Area Plan, then Developer's obligations under Article VII shall continue to be subject to the remaining provisions of this Article IX(C). In such event and in the event that the impact fees so adopted are increased or decreased from time to time, Developer and County agree to amend the Road Impact Fee obligations set forth in Article VII, and to adjust Developer's obligations in accordance with constitutional and statutory parameters so that the burden of the Road Impact Fee obligations under Article VII are equitable in relation to the road impact fees assessed against others under such a County road impact fee program applicable to the general areas described above.

ARTICLE X GROUNDWATER MONITORING

Developer and the County acknowledge that Developer has completed a study of the estimated impacts of the Project upon groundwater recharge. That groundwater study has been submitted to the City and to the County. Developer shall continue to monitor groundwater impacts of the Project in accordance with the requirements of the United

States Army Corps of Engineers set forth in the terms and conditions of Developer's permit under Section 404 of the Clean Water Act.

ARTICLE XI DEVELOPER'S REPRESENTATIONS AND WARRANTIES

Developer represents, covenants and agrees that as of the date of the signing of this Agreement:

1. It is duly organized as a Colorado limited liability company and is in good standing and authorized to transact business in the State of Colorado; and
2. It has an undivided fee simple ownership of the Property, subject to reservations and exceptions of record, including patent reservations and oil and gas mineral reservations; and
3. The officers or other persons signing this Agreement on behalf of Developer have been duly authorized thereby to do so without reservation, and any claims which might be made due to lack of such authority are hereby expressly waived by Developer; and
4. There are no contractual, legal or other impediments to Developer's execution of this Agreement, and Developer may legally enter into this Agreement.

ARTICLE XII RUN WITH THE LAND

Developer and the County agree that the burdens of all terms and obligations contained in this Agreement, as it may be amended from time to time, shall run with the land notwithstanding the assumption of authority over the Property, or any portion thereof, by any governmental entity whether by annexation, municipal incorporation or otherwise and that the benefit of all terms and obligations contained in this Agreement, as it may be amended from time to time, shall be held in gross respectively by the County and Developer based upon the party intended to be benefited thereby. The terms and obligations contained in this Agreement shall be enforceable by the County as covenants and/or as servitudes running with the land.

ARTICLE XIII ADDITIONAL PROPERTY

If any additional property is added to the Project or otherwise becomes subject to the Development Agreement prior to the termination of Article VII herein, the Developer shall engage in a modeling and monitoring process similar to that employed in the Impact Assessment referenced herein and Developer shall address the results of such monitoring and modeling in a manner mutually acceptable to the Parties.

**ARTICLE XIV
SITE SPECIFIC DEVELOPMENT PLAN**

This Agreement shall not grant or create any common law or statutory vested development rights or exempt the Developer from any applicable County or City development review regulations or processes. Notwithstanding the foregoing, the County agrees that performance of Developer's obligations hereunder shall constitute complete satisfaction of all requirements under the County's present authority and jurisdiction with respect to the Project, including any legal or equitable rights or powers that the County may have under the Surcharge IGA or any other memorandum of agreement to which it is a party related to the Project.

**ARTICLE XV
FUTURE REGULATIONS**

The County reserves the right in the future to enact and apply regulations to County roads that are general in nature and are applicable to all similarly situated properties subject to land use regulation by the County, even though such regulations may be more or less stringent than the standards applicable to the Property by virtue of this Agreement. The County expressly reserves the right in the future to develop a county road impact fee program and to seek to extend such program to the Project through cooperative arrangement with the City, subject to the provisions of Article IX(B), or, in the absence of such a cooperative arrangement, subject to the adjustment provisions of Article IX(C).

**ARTICLE XVI
DEFAULT AND REMEDIES**

In the event of any threatened or actual breach or violation of or any default under this Agreement, in addition to all other remedies available, the County shall be entitled to injunctive relief restraining the breach, violation or default or threatened breach, violation or default, together with such other legal or equitable relief which may otherwise be available, including specific performance. The Developer expressly consents to and submits to the jurisdiction of the District Court for the Sixth Judicial District of Colorado (and to appropriate appellate courts of the State of Colorado), in any suit, action, dispute or proceeding seeking to enforce any provision of, or based on, arising out of or relating to this Agreement or the transactions contemplated hereby and agrees that all claims in respect of the action or proceeding may be heard and determined in such court. Each party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court or forum. Each of the parties waives any defense of inconvenient forum to the maintenance of any suit, action, dispute or proceeding so brought and waives any bond, surety, or other security that might be required of any other party with respect thereto. Any party may make service on any other party by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Article XVIII(G). Nothing in this Article XVI shall affect the right of any party to serve legal process in any other manner permitted by law

or at equity. Each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or at equity. The parties hereby agree that the assumption or jurisdiction shall not be delayed or curtailed by any doctrine requiring exhaustion of any remedies or procedures provided by the laws, ordinances, or customs of the SUTT, including any hearing or determination by any tribal court or forum. If any action is necessary to enforce the parties' respective rights or obligations hereunder, the prevailing party shall be entitled to recover all reasonable costs of such action or litigation including but not limited to costs, expert and other witness fees, travel, telephone, copying, fax and other expenses of every type and description whatsoever, including attorney's fees.

The City acknowledges that the County's ability to enforce the provisions of this Agreement depends, in part, upon the willingness of the City to insist upon Developer obtaining the County's signature on each Final Plat and receipt of payment for applicable Road Impact Fees prior to the City's execution and recording of the applicable Final Plat as described in Article VII (B) herein. The City hereby agrees as part of this Agreement and its existing obligation under the Surcharge IGA, to exercise its best efforts to ensure that Developer pays the County's required Road Impact Fees and the County's signature is obtained on each Final Plat as outlined in Article VII (B) as a condition precedent to the City's recording of any Final Plat.

ARTICLE XVII DISCLAIMER OF SOVEREIGN IMMUNITY

Developer, on behalf of itself as well as its successors and designees hereby irrevocably disclaims and waives any inherent sovereign immunity and any defenses based thereon, from any claim, litigation or dispute arising under the provisions of this Agreement, or otherwise relating to this Agreement, by or between or affecting the parties hereto; provided, further, that title to the Property may not be assigned, conveyed, or transferred to an entity possessing inherent sovereign immunity applicable to Indian tribes or nations, without Developer first having obtained the prior written consent of the other parties to this Agreement. Such consent shall be granted, if the entity possessing such inherent sovereign immunity agrees to waive such immunity to the extent necessary to obtain interpretation and enforcement of the Agreement as provided in Article XVI.

ARTICLE XVIII GENERAL PROVISIONS

The following general provisions shall govern the relationship between the parties.

A. Effective Date and Term. This Agreement shall be effective thirty-one days after final passage and publication of the Development Agreement by the City, subject to the right of the voters to initiate a referendum regarding its adoption. If a legally sufficient referendum petition complying with all relevant statutory requirements is filed within thirty days after final passage and publication of the Development

Agreement, no part of this Agreement shall take effect until approved by a vote of the registered electors of the City of Durango. If the Development Agreement is approved, the term of this Agreement shall terminate upon the earlier of (i) the expiration of the Development Agreement, or (ii) completion of road impact mitigation measures described in Articles IV, V, and VI and payment of the impact fees described in Article VII.

B. Entire Agreement. Except as otherwise expressly set forth herein, this Agreement and the Surcharge IGA embody the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

C. Successors and Assigns. Except as otherwise provided herein, Developer shall have the absolute right to transfer or sell any or part of its interest in the Property; provided, however, that in the event of transfer, Developer's legal representatives, transferees, successors and assigns shall be bound to comply with all terms hereof.

D. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single agreement.

E. Amendment. All covenants, representations and warranties herein and all other obligations, responsibilities and terms hereof shall continue to be fully binding and enforceable on the parties until expressly superseded by written agreement of the parties. No amendment to this Agreement shall be effective unless in writing, signed by all parties who are then subject to this Agreement.

F. Waiver. No failure on the part of any party hereto to exercise and no delay in exercising any right hereunder shall operate as a waiver of such right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. No waiver of, or failure to exercise any right hereunder shall operate to prevent future enforcement of such right.

G. Notices. Notices hereunder may be given by certified mail, return receipt requested, or by facsimile or electronic mail transmission. Notices shall be effective on receipt, provided, however, that confirmation of receipt shall be required in all instances. Notice to the respective parties shall be given to:

To La Plata County, Colorado at:

Michael Scannell, County Manager
La Plata County
1060 E. 2nd Avenue
Durango, Colorado 81301

With copies to:

County Engineer
La Plata County Engineering Department
1060 Main Street, Suite 104
Durango, CO 81301

Sheryl Rogers, County Attorney
Goldman, Robbins & Rogers, LLP
679 E. 2nd Avenue, Suite C
P.O. Box 2270
Durango, CO 81302

To Developer at:

GRVP, LLC
160 Rock Point Drive, Suite E
Durango, CO 81301

With copies to:

Maynes, Bradford, Shipps & Sheftel
Attn. Thomas Shipps
835 E. 2nd Avenue
P.O. Box 2717
Durango, CO 81302-2717

or to any other addresses as either party hereto may, from time to time, designate in writing and deliver in a like manner.

H. Recordation. This Agreement shall be recorded in its entirety in the official records of La Plata County, Colorado not later than ten (10) days after all parties execute this Agreement.

I. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

J. Further Acts. Each of the parties shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

K. No Partnership; Third Party Beneficiaries. It is not intended by this Agreement to, and nothing contained in this agreement shall, create any partnership, joint venture or other arrangement between Developer and the County. No term or provision of this Agreement is intended to or shall be for the benefit of any person, firm,

organization or corporation not a party hereto except Mercy Medical Center of Durango or DRF Durango, LLC and no other person, firm, organization or corporation shall have any right or cause of action hereunder.

L. **Severability.** The material provisions of this Agreement are not severable. If any severable term or provision of this Agreement shall be adjudicated to be invalid, illegal or unenforceable, this Agreement shall be deemed amended to delete therefrom the term or provision thus adjudicated to be invalid, illegal or unenforceable and the validity of the other terms and provisions of this Agreement shall not be affected thereby.

The provisions of Articles IV, V, IX, XII, XVI, and XVII of this Agreement are deemed material and nonseverable. If an action is brought by Developer, its transferees, successors or assigns that result in any provision of such nonseverable Articles being determined or declared by a Court to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the parties shall negotiate in good faith for an equivalent or substitute provision or other appropriate adjustment to this Agreement. If the parties cannot reach agreement, or if so desired by the parties, then the issues in dispute shall be submitted to a mediator acceptable to both parties for nonbinding mediation. Unless otherwise agreed to by the parties, such mediation shall occur within sixty (60) days of a party's receipt of a notice to mediate from the other party.

*** SIGNATURE PAGE TO COUNTY AGREEMENT ***
BY AND BOARD OF COUNTY COMMISSIONERS
FOR LA PLATA COUNTY, COLORADO,
CITY OF DURANGO,
AND GRVP, LLC



Attest:

Editha Angelle
Deputy Clerk to the Board

BOARD OF COUNTY COMMISSIONERS OF LA
PLATA COUNTY, COLORADO

Robert G. Lieb
Robert Lieb, Chairman

GRVP, LLC, a Colorado Limited Liability
Company

Robert Smith
By: Robert Smith, Manager, GFMC,
LLC, its Manager

STATE OF COLORADO)
)
LA PLATA COUNTY)

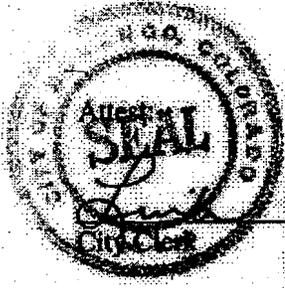
The foregoing instrument was acknowledged before me this 22 day of October, 2004 by Robert Smith, manager of GFMC, LLC, manager of and authorized representative of GRVP, LLC, a Colorado limited liability company, who is personally known to me or has produced identification.

Debbie Turner
Notary Public

My commission expires:
12/31/2006

CITY OF DURANGO, COLORADO

By: Joe Colgan
Joe Colgan, Mayor

 A circular notary seal for the City of Durango, Colorado. The seal contains the text "Notary Seal" and "City of Durango". A signature is written across the seal.

AGREEMENT

This Agreement is made this 28th day of February, 2005, by and between Durango School District 9-R ("District"), a public school district organized under laws of the State of Colorado, whose address is 201 E. 12th Street, Durango, CO 81301, and GRVP, LLC ("GRVP"), a Colorado limited liability company, whose address is 160 Rock Point Drive, Suite E, Durango, CO 81301.

RECITALS

- A. GRVP is the owner of approximately 621 acres of land (the "Property") situated within the boundaries of the District in the Grandview Area of La Plata County, Colorado, known as "Three Springs" and legally described as Tracts 3, 4, and 5 of the Three Springs Minor Subdivision Final Plat, County of La Plata, State of Colorado, recorded on April 29, 2004, under Reception No. 88523 in the real property records of the Clerk and Recorder of the County of La Plata, State of Colorado.
- B. The City of Durango (the "City") annexed the Property into the City on or about January 21, 2004.
- C. Consistent with the conceptual development plan conditionally approved by the City on January 21, 2004, as the same may be amended from time to time (including amendments that may result from GRVP's proposed Amended Conceptual Development Plan dated December 7, 2004 currently pending before the City) ("Conceptual Development Plan"), GRVP intends to build a master planned mixed-use community, with a maximum of 2283 residential dwelling units and 864,000 square feet of commercial buildings, exclusive of the Mercy Regional Medical Center and associated medical office buildings anticipated to be constructed on Tracts 1 and 2 of the Three Springs Minor Subdivision Final Plat (referenced above).
- D. GRVP recognizes that the construction and operation of schools is critical to the ultimate vitality of Three Springs, and, accordingly, GRVP is willing to exceed those requirements that would otherwise apply to Three Springs with respect to school land dedications and payment of school impact fees, provided that the City also provides GRVP with acceptable governmental assurance that Three Springs may be developed consistently with the Conceptual Development Plan, as amended.
- E. The City and GRVP are currently engaged in the negotiation of a "Development Agreement" as permitted by C.R.S. § 24-68-104(2), which may provide GRVP with acceptable governmental assurance that Three Springs may be developed consistently with the Conceptual Development Plan, as amended, and may further define the rights and responsibilities of GRVP and the City with respect to Three Springs ("Development Agreement").
- F. The District and GRVP desire to enter into an agreement that memorializes GRVP's commitment to dedicate lands for school purposes and to pay school impact

fees, subject to the condition that the City and GRVP enter into the Development Agreement, which shall incorporate this Agreement by reference.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, GRVP and the District agree as follows:

1. Dedication of School Sites. Subject to the conditions hereinafter set forth, and upon the District providing GRVP with a written request to do so, GRVP hereby agrees to convey to the City for the purpose of dedication to the District two parcels of land collectively containing forty (40) acres for District school sites unless agreed to otherwise by the parties at the time of site planning ("School Sites").

2. Location of School Sites. The School Sites shall be located within the Property in general conformity with the Conceptual Development Plan as depicted on Exhibit A, attached hereto and incorporated herein.

3. Warranty Deed and Limitations. GRVP shall convey the School Sites to the City by general warranty deed, or other form of deed and title policy acceptable to the parties at the time of transfer, free and clear of all encumbrances, except those already of record as of the date of this Agreement and those about which GRVP and the District may otherwise agree, including the following limitations, reservations, or exceptions:

A. Easements for the benefit of GRVP, the City or their nominees for the installation, ingress and egress to and operation, maintenance and replacement of utilities and utility lines, including without limitation: gas, water, sewer, storm sewer, electricity, and telecommunications; provided that said easements do not interfere in a material way with the District's use of the School Sites for school site purposes. The Parties expressly acknowledge that La Plata Electric Association, Inc. currently intends to relocate a 46kv power line onto portions of the School Site, as generally depicted on Exhibit A, which relocation is acceptable to the District.

B. Easements for the benefit of GRVP, the City or their nominees for the installation, ingress and egress to and operation, maintenance and replacement of a pedestrian and bicycle trail system contemplated to be constructed and maintained by GRVP, the City or their nominees throughout Three Springs in a manner consistent with the Conceptual Development Plan; provided that said easements do not interfere in a material way with the District's use of the School Sites for school site purposes.

C. A condition subsequent with a possibility of reverter for the benefit of GRVP in the event that the School Sites are used by the District for purposes other than

school district purposes. This provision shall not prevent the sale of the School Sites by the District, subject to the subsection D following.

D. A preferential right for the benefit of GRVP in the event that the District desires to sell the School Sites or any portion thereof, permitting GRVP to repurchase the same at the fair market value of the School Sites as of the Effective Date of this Agreement. For purposes of this Agreement, the "Effective Date" shall be the date following execution of this Agreement on which the Development Agreement is irrevocably approved by the City.

E. The covenants set forth in this Agreement, which shall be covenants running with the land.

4. Mutual Access. GRVP agrees to grant or otherwise cause to be granted to the District reasonable access to the School Sites in accordance with the Conceptual Development Plan, and the District agrees to grant GRVP reasonable access across the School Sites to adjacent lands of GRVP, provided that such access does not interfere in a material way with the District's use or projected use of the School Sites for school purposes.

5. Covenants Regarding Use of School Sites. The District hereby agrees and covenants as follows:

A. *School Levels.* The level of schools to be placed on the School Sites shall be elementary or middle school level in the general locations indicated on the Conceptual Development Plan and Exhibit A. Additionally, the District may use the School Sites for administrative facilities and for vocational education and training of all levels of students at the middle school site. Because of the limited nature of highway access and the high level of associated traffic impacts, the District shall not use the School Sites as the site for a comprehensive high school.

B. *Timing of Dedication; Maintenance; pre-Construction Use.* The District shall not request GRVP to dedicate the School Sites until such time that the District has notified GRVP that it has determined that the District has reasonably determined that it has or will have sufficient capital to fund construction of permissible facilities at the School Sites. Prior to such dedication, the District shall have no responsibility to maintain the School Sites, and such responsibility shall remain that of GRVP, except as otherwise agreed by and between GRVP and third parties. Following dedication, the District shall have the responsibility to maintain the School Sites, except as otherwise agreed by and between the District and third parties. Following dedication, the Parties agree to cooperate in developing landscape buffers and maintenance of their common boundaries. Prior to the commencement of District construction of school facilities, GRVP may use the School Sites for temporary purposes not inconsistent with eventual use of the School Sites for school purposes, including without limitation, the depositing of top soil at locations agreed to by the Parties.

C. *Design Review.* The District shall submit all plans for improvement of the dedicated School Sites to the Three Springs Design Review Committee or shall include a member of such committee in the District's planning process. The District acknowledges that Three Springs is being designed and developed as a "traditional neighborhood development" with design principles that address sustainability, water conservation, and energy conservation. To the extent reasonably practicable, the District agrees to incorporate these principles into the planning and design process for future District improvements at Three Springs.

D. *Naming of Facilities.* The District shall give reasonable consideration to including "Three Springs" in the names selected for school facilities constructed at the School Sites.

6. School Impact Fees. GRVP shall pay school impact fees ("School Impact Fees") in accordance with the District fee schedule in effect at the time of execution of this Agreement, and in accordance with the school impact fee payment process as it exists at the time the payments become due. A copy of the currently applicable fee schedule is attached hereto and incorporated herein as Exhibit B. The District agrees that in consideration of GRVP's consent to pay the impact fees, in addition to making the School Site dedications, the District will make all reasonable efforts to construct the first new elementary and middle schools within the District at Three Springs unless the Board of Education of the District affirmatively determines other sites require priority construction.

7. Three Springs Schools. The District also agrees that the School Impact Fees paid to the District from development at Three Springs will be used only to make school district improvements at Three Springs. The District shall separately account for School Impact Fees pursuant to this Agreement.

8. Satisfaction of GRVP Obligations. The District hereby agrees that GRVP's performance of GRVP's duties under this Agreement satisfy all of GRVP's obligations and responsibilities to the District to address the school impacts of development of Three Springs as contemplated in the Conceptual Development Plan. Further, the District authorizes GRVP to present an executed copy of this Agreement to the City for reference or incorporation into the Development Agreement.

9. Condition Precedent. The effectiveness of this Agreement is expressly conditioned upon the irrevocable approval of a Development Agreement between GRVP and the City. Until such time that such condition is satisfied, neither Party may seek performance of the obligations herein contained.

10. Notices. Notices that may be given pursuant to this Agreement shall be deemed sufficient if given in writing and delivered personally, by telecopy or by recognized courier service, as follows:

A. Durango School District 9-R

201 East 12th Street Durango, CO 81301
Attention: Superintendent of Schools
Fax: (970) _____

Copy To:
Reese Miller
1120 Lincoln Street, Suite 1308
Denver, CO 80203
(303) 595-0941

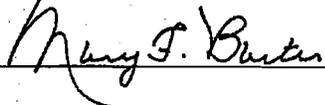
B. GRVLP, LLC
160 Rock Point Drive, Suite E
Durango, CO 81301
Attention: Patrick Vaughn, Mark Mitchell
Fax: (970) 382-4227

Copy To:
Thomas H. Shipps
Maynes, Bradford, Shipps & Sheftel, LLP
P.O. Box 2717
Durango, CO 81302

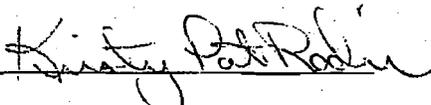
11. Governing Law and Dispute Resolution. This Agreement shall be governed by the laws of the State of Colorado, and in the event of a dispute that cannot be resolved following good faith efforts of the Parties to do so, either Party may initiate an action to interpret or enforce this Agreement in a State court of competent jurisdiction located in La Plata County, Colorado. The prevailing Party in any such dispute shall be entitled to recovery of all costs and fees associated with bringing such action, including reimbursement of attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year first above written.

DURANGO SCHOOL DISTRICT 9-R
LA PLATA COUNTY
STATE OF COLORADO



ATTEST:



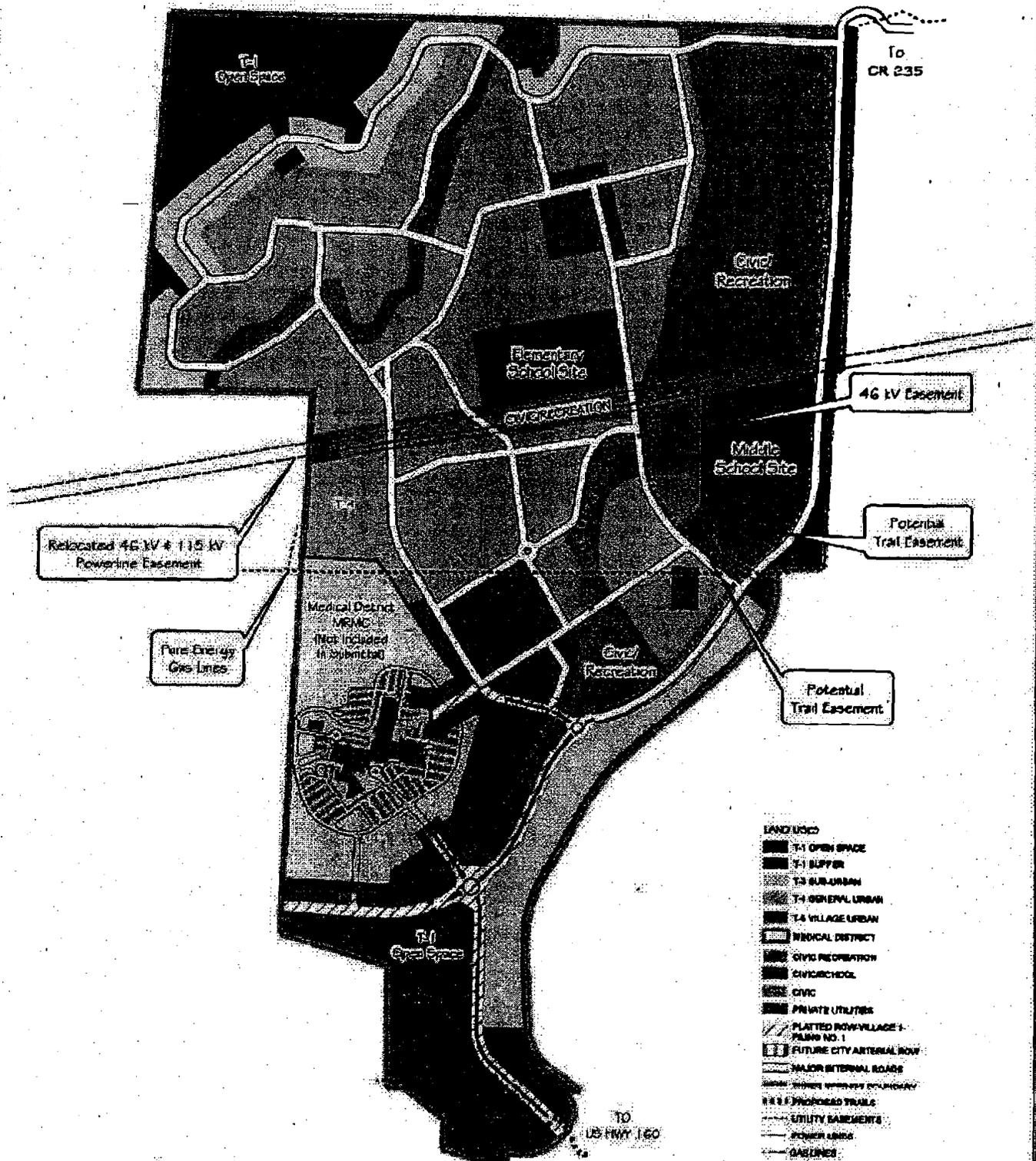
Hill Country Foundation and West Valley Hospital School District 9 NISchool Agreement (10-05-00)

Robert Santistevan, Manager



GRVP, LLC, by its manager,
GPMC, LLC

THREE SPRINGS PLANNED DEVELOPMENT 9-R SCHOOL DISTRICT EXHIBIT A



- LAND USES**
- T-1 OPEN SPACE
 - T-1 BUFFER
 - T-3 SUBURBAN
 - T-4 GENERAL URBAN
 - T-4 VILLAGE URBAN
 - MEDICAL DISTRICT
 - CIVIC RECREATION
 - CIVIC SCHOOL
 - CIVIC
 - PRIVATE UTILITIES
 - PLATTED BOW/VILLAGE 1-PLANS NO. 1
 - FUTURE CITY ARTERIAL ROAD
 - MAJOR INTERNAL ROADS
 - BOUNDARY BETWEEN NEIGHBORHOODS
 - PROPOSED TRAILS
 - UTILITY EASEMENTS
 - OWNER LINES
 - EASEMENTS



FILE PATH: G:\EBA\CDRUPPASE\INFO\CONTR\REV\015 0105020-1 SCHOOL.DWG

GOFF
ENGINEERING & SURVEYING
DATE: 01.05.05

TAP PURCHASE AGREEMENT

THIS AGREEMENT is made this 16th day of April, 2004 between SOUTH DURANGO SANITATION DISTRICT (the "District") TIERRA GROUP, LLC ("Tierra"), a Colorado limited liability company, and its anticipated successor, GRVP, LLC (the "GRVP"), a Colorado limited liability company, (Tierra and GRVP collectively "Developer").

RECITALS:

WHEREAS, the District is a quasi-municipal corporation and political subdivision of the State of Colorado duly organized and existing under the laws of the State of Colorado, including Title 32, Article 1, C.R.S.; and

WHEREAS, the District is undertaking the construction of certain improvements to enlarge the capacity of the Wastewater Treatment Plant ("WWTP") and the installation of a larger capacity sewer line to serve the Grandview area (the "Project"); and

WHEREAS, the District has adopted a bond resolution authorizing the issuance of \$4,650,000 of revenue bonds (the "Bonds") for the purpose of financing the Project as more fully set forth in the Indenture of Trust dated as of April 1, 2004 between the District and J.P. Morgan Trust Company, National Association as Trustee (the "Indenture"); and

WHEREAS, the Bonds shall be payable solely from tap fee revenues of the District (the "Pledged Revenue") which shall be deposited in an account solely for the purpose of paying the bonds (the "Bond Fund") as defined and more fully described in the Indenture; and

WHEREAS, Tierra is the owner of certain real property located within the boundaries of the District in the Grandview area known as the Three Springs Development; and

WHEREAS, Tierra has agreed to transfer all of its rights, title and interest in and associated with the Three Springs Development to the GRVP, which will then become the developer of the Three Springs Development; and

WHEREAS, a significant portion of the Pledged Revenue needed to satisfy the District's Bond payment obligations are anticipated to come from the Developer's purchase of sewer tap fees from the District; and

WHEREAS, both Tierra and GRVP are wholly owned subsidiaries of the Southern Ute Indian Tribe (the "Tribe"), a federally recognized Indian tribe organized under the Indian Reorganization Act of 1934; and

WHEREAS, the Tribe has entered into a Payment Guaranty in favor of J.P. Morgan Trust Company, National Association, as trustee ("Trustee"), dated April 16, 2004, which is referenced in the Indenture and in this Agreement as the "Guaranty Agreement"; and

WHEREAS, the Guaranty Agreement has enhanced the credit worthiness of the District's obligations under the Indenture and has otherwise facilitated the sale of the Bonds; and

WHEREAS, the Three Springs Development will require sewer service from the District, which service will not be available until the District completes the Project in April, 2005; and

WHEREAS, the parties recognize that, even after completion of the Project, the actual sewer service capacity then available from the District may not be sufficient without future enlargements and expansions to meet the long term needs of the Three Springs Development; however, the District may need the revenues from advance sewer tap purchases by Developer to meet the District's Bond payment obligations; and

WHEREAS, the District and the Developer desire to coordinate the Developer's purchase of sewer taps in a manner that will provide the District with sufficient Pledged Revenue to meet its Bond payment obligations, to make performance under the Guaranty Agreement unnecessary, and either grant or reserve to the Developer sewer service sufficient to meet the needs of the Three Springs Development in conformity with the District's rates, policies and future expansion decisions; and

WHEREAS, the parties desire to memorialize the District's obligations to Developer made as consideration for the Tribe's entering into the Guaranty Agreement and desire to set forth the terms and conditions under which the District shall reserve, allocate, and sell sewer taps for the benefit of Developer.

NOW THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. **Tap Purchases.** Subject to the conditions herein set forth, the District hereby grants the Developer the exclusive right to purchase 490 taps, which number shall be reduced in accordance with the following schedule:

<u>Year</u>	<u>Taps</u>
2004	140
2005	25
2006	75
2007	100
2008	100
2009	50

The term "tap" as used herein means Equivalent Residential Tap ("ERT") as that term is used in the District's current rate resolution. Any taps not purchased by the Developer in any given year

shall be released from this grant and shall be available for sale by the District to other parties, including the Developer, in future years. The parties recognize that the first 140 taps listed in year 2004 are dedicated for the use of Mercy Regional Medical Center ("Mercy Regional Medical Center taps") with respect to the Mercy Regional Medical Center Phase I development located within the Three Springs Development. In order to secure the Mercy Regional Medical Center taps, Developer must purchase the Mercy Regional Medical Center taps, at the price of \$7,750 per ERT, on or before August 31, 2004. If Developer purchases the Mercy Regional Medical Center taps, the District hereby assures Developer that sufficient sewer system capacity for actual system use shall exist to meet the needs of the Mercy Regional Medical Center upon completion of the Project. The right to purchase the Mercy Medical Center taps is hereby granted regardless of whether a building permit has been issued for construction of the Mercy Regional Medical Center at the time of Developer's tap purchase. Except for Mercy Regional Medical Center taps and "Guaranty Tap Purchases," hereinafter defined, Developer's right to purchase a tap is conditioned upon the contemporaneous application for a building permit for the residential or commercial unit(s) for which the tap is being purchased. If Developer exercises the rights granted herein to purchase taps allocated above for years 2005 and 2006, the District hereby assures Developer that sufficient sewer system capacity for actual system use under those taps shall exist upon completion of the Project. The District shall maintain accurate records of the number of taps purchased by Developer, including a designation of whether any such taps are Guaranty Tap Purchases.

2. **Guaranty Tap Purchases.** The parties recognize that the Pledged Revenue contained in the Bond Fund established under the Indenture may be insufficient to meet the District's periodic Bond payment obligations. The District hereby covenants and agrees to provide Developer with a written report no later than thirty (30) days prior to the date on which each of its Bond payments are due, which reports shall inform Developer of the status of the Bond Fund, including the amount of money contained in the Bond Fund, the amount of the payment due under the next Bond payment, the date of the next payment, and additional sewer tap revenues and Pledged Revenues anticipated to be in the Bond Fund at the time that such payments are due. Following receipt of any such report, Developer shall have the option to purchase such additional taps from the District that the Developer and District agree may be needed to generate sufficient Pledged Revenue in the Bond Fund to meet the District's next ensuing Bond payment. Any such tap purchases by Developer are referred to herein as "Guaranty Tap Purchases." The purchase price for a Guaranty Tap shall be the price then payable for a tap under the District's rate resolution in effect at the time of such purchase. The Developer may make a Guaranty Tap Purchase regardless of whether a building permit is being issued contemporaneously therewith and without designation of the specific property for which such tap may ultimately be used. Any Guaranty Tap Purchases made in any year shall be considered in computing the Developer's remaining rights to purchase taps set forth in the schedule above. Developer shall notify the District in writing at such time that a Guaranty Tap is to be used for a specific building or site.

3. **Time of Payment.** Except for Guaranty Tap Purchases and Mercy Regional Medical Center taps, payment of a tap fee is due at the time an application for a building permit is submitted.

4. **User Fees Generally.** Except for Guaranty Tap Purchases and the Mercy Regional Medical Center taps, user fees will be assessed commencing the month following the payment of the tap fee. User fees for the Mercy Regional Medical Center taps will commence the month following connection of the improvements to water service from the City of Durango.

5. **Guaranty Tap Purchases and User Fees.** No user fee shall be charged for a Guaranty Tap until the Developer assigns the Guaranty Tap to a specific building permit.

6. **Grandview Interceptor and Credit Enhancement.** In recognition of the credit enhancement provided by the Tribe, which will enable the District to obtain the funds to complete the Grandview Interceptor, the District agrees that the Developer shall have exclusive right to 40% of the capacity in the Grandview Interceptor. This grant of capacity is not intended as an ownership interest in the Grandview Interceptor facilities, but is intended as a proprietary interest in future use of the Grandview Interceptor to serve the needs of the Three Springs Development. District shall not make commitments for service that would reduce the Developer's capacity in the Grandview Interceptor. The District shall maintain accurate records of the capacity in the Grandview Interceptor, including unused capacity, capacity being used by other parties, and capacity being used by Developer. Additionally, in recognition of the credit enhancement provided by the Tribe, the District agrees to pay the Developer, at the time of closing on the Bonds, the sum of \$46,450 and on each September 1 thereafter a credit enhancement fee of 1% of the outstanding principal balance on the Bonds as computed following the payment then due, which shall be payable from the proceeds of the Bond sale from the Costs of Issuance Fund established under the Indenture or such other fund as may be designated by the Trustee in accordance with the Indenture.

7. **Reserved Capacity.** In the event capacity is not available in the WWTP to provide actual sewer service associated with any Guaranty Tap Purchases, District agrees to reserve capacity for such Guaranty Tap Purchases in future expansions of the WWTP. This grant of capacity is not intended as an ownership interest in the WWTP, but is intended as a proprietary interest in future use of the WWTP to serve the needs of the Developer associated with such Guaranty Tap Purchases.

8. **District Rules and Regulations.** Sewer service provided to the Three Springs Development shall be subject to all the resolutions; rules and regulations; and codes and standards of the District, except to the extent specifically modified by this Agreement. The District hereby represents and warrants that it is authorized to enter into this Agreement and that the granting of the rights under this Agreement does not conflict with and is not prohibited by any applicable law, judicial decree or ruling binding upon the District.

9. **Parity Bonds.** The District agrees that it will not, without the written consent of the Developer, issue any additional bonds, notes, debentures or other multiple fiscal year financial obligations payable in whole or in part from or having a lien or encumbrance upon the Pledged Revenue or any part thereof on a parity with the lien thereon of the Bonds.

10. **Compliance with Indenture Covenants.** The District hereby agrees that it will comply with the covenants and restrictions contained in the Indenture, and, notwithstanding anything therein contained, the Project to which the Bond proceeds shall be directed shall be limited to the Project as defined above in this Agreement. The District further agrees that the Developer and the Tribe shall have the right under this Agreement to enforce the covenants and restrictions contained in the Indenture to the same extent that the Trustee possesses such rights under the terms of the Indenture. Further, the District agrees to not seek a waiver, extension or modification of its obligations under the Indenture without the prior written consent of Developer.

11. **Dispute Resolution.**

A. Should a dispute arise regarding this Agreement or the performance or nonperformance of the obligations herein, the parties agree that such disputes shall first be submitted to non-binding mediation.

B. Should no mutually agreeable resolution of a dispute be reached by the parties, either party may bring an action to enforce the terms of this Agreement in the District Court for the County of La Plata, Colorado.

C. In the event litigation is necessary to enforce this Agreement, the prevailing party shall be entitled to recover attorney fees.

10. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate it or render unenforceable any other provision of this Agreement, it being the intent of the parties that the remaining provisions shall remain in full force and effect.

11. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

12. **Notice.** Notice shall be sufficient by deposit of a certified letter in the U. S. Mail addressed to the noticed party at the following addresses:

District: South Durango Sanitation District
P. O. Box 2024
Durango, CO 81302

with a copy to: Floyd L. Smith
48 County Road 250, Suite 5
Durango, CO 81301

Developer: GRVP, LLC
P.O. Box 757
Durango, CO 81302

with a copy to: Thomas S. Shipps, Esq.
Maynes, Bradford, Shipps & Sheftel, LLC

The parties hereby covenant and agree to provide notice of address change to the other party within ten (10) days thereof.

13. Amendments. This Agreement may be amended in writing signed by the parties.

14. Counterparts. This Agreement may be executed in counterparts, each of which shall be regarded as an original and both of which shall constitute but one and the same instrument.

IN WITNESS WHERE OF, the parties hereto have set their hands and seals that day and year first above written.

SOUTH DURANGO SANITATION DISTRICT

By: Thomas J. Price

ATTEST: Thomas J. Price

GRVP, LLC

By: [Signature]

By: GMC, LLC, Manager

TEPBA GROUP, LLC

By: [Signature]

By: GMC, LLC, Manager

P.O. Box 2717
Durango, CO 81302

EXHIBIT E

March 1, 2005			
THREE SPRINGS			
ADEQUATE PUBLIC INFRASTRUCTURE MATRIX			
Satisfaction of Task is defined as the following:			
1 Completion/preliminary acceptance of all City required improvement items;			
All other non-City improvements will require evidence of one of the following:			
2 Surety posted with the relevant entity assuring completion,			
3 Advance payment covering estimated cost,			
4 Service Provider bond issue guarantee (e.g. South Durango Sanitation),			
5 Commitment in writing from Service Provider (e.g. South Durango Sanitation),			
6 Written agreement to complete or fund (e.g. LPEA substation), or			
Expansion to another Village or Phase shall be allowed if adequate public facilities are proven to exist			
All amounts are bids or estimates in 2004 dollars (FINAL COSTS MAY VARY)			
PHASE		1	2
DWELLING UNIT		1100	1183
RETAIL/OFFICE/LIGHT INDUSTRIAL (1000 S.F.)		175	689
LODGING		300	
ITEM*	TASK		
OS	OFF-SITE UTILITIES		
OS-1	WATERLINE EXTENSION	\$806,000	
OS-2	EXTEND HIGH PRESSURE GAS LINE	\$1,500,000	
OS-3	HWY 160 & THREE SPGS BLVD. INTERSECTION	\$2,800,000	
OS-4	CR 235 ACCESS UPGRADE		\$1,050,000
OS-5	CR 235/CR 234 INTERSECTION		\$375,000
OS-6	CR 220 TRAFFIC CONTROL PAYMENT	\$50,000	
OS-7	SDSD WWTP EXPANSION/INTERCEPTOR	\$4,650,000	
OS-8	GRANDVIEW WATER BOOSTER STATION - PHASE I	\$600,000	
R	ON-SITE ROADS		
R-1	VILLAGE I, FILING I ROADS, ETC. TO MRCM	\$6,472,000	
W	VILLAGE WATER SYSTEM		
W-1	TANK TRANSMISSION LINE	\$593,000	
W-2	STORAGE TANK/ROAD	\$1,058,000	
DR	VILLAGE DET. & DRAIN		
DR-1	WILSON GULCH DETENTION		\$480,000
DR-2	TRAVERSE WASH	\$1,871,000	
DR-3	CONFLUENCE DROP STRUCTURE	\$636,000	
DR-4	EAST/WEST DETENTION		\$208,000
DR-5	COMMUNITY PARK DETENTION		\$TBD
P	VILLAGE PARKS & OPEN SPACE		
P-1	WILSON GULCH OPEN SPACE		\$130,000
P-2	CONFLUENCE NEIGHBORHOOD PARK		\$800,000
P-3	EAST/WEST NEIGHBORHOOD PARK		\$500,000
P-4	FLORIDA CANAL NEIGHBORHOOD PARK		\$850,000
P-5	TRAVERSE WASH OPEN SPACE	\$83,000	
DU	DRY UTILITIES		
DU-1	ELECTRICAL SUBSTATION	\$1,000,000	
DU-2	RELOCATE 46 KV LINE	\$50,000	
	SURETY/DESIGN/CONSTRUCTION MANAGEMENT/STAKING - 25% (City of Durango, CDOT & La Plata County Tasks only)	\$3,032,250	\$767,000
	TOTAL BY PHASE:	\$25,211,250	\$5,280,000
*SEE ATTACHED PUBLIC INFRASTRUCTURE DESCRIPTION FOR DETAIL ON EACH TASK			

EXHIBIT E

ADEQUATE PUBLIC INFRASTRUCTURE MATRIX DESCRIPTIONS

February 7, 2005

Item	Description
OS	OFF-SITE UTILITIES
OS-1	WATERLINE EXTENSION – Waterline from the South Durango (aka “Garlick”) water tank being constructed by the City to the Grandview Booster Station located on the Crader property continuing east to the western boundary of Three Springs.
OS-2	EXTEND HIGH PRESSURE GAS LINE – ATMOS Energy will construct a High-pressure gas line tying into the existing ATMOS network at the Carbon Junction riser, and terminating within the boundary of Three Springs.
OS-3	HWY 160 & THREE SPRINGS BLVD INTERSECTION – In accordance with the terms and conditions of State Highway Access Permit, No. 504023 dated March 16, 2004 as amended or supplemented (“Access Permit”) access and safety improvements to this intersection consisting of signalization, auxiliary lanes, and adjacent access consolidation.
OS-4	CR 235 ACCESS UPGRADE - Reconstruct County Road 235 to the status of Major Collector based on La Plata County be implemented per “County Agreement” dated 10/25/04 between the County Standards and Specifications. Limits of the project are defined as the intersection with County Road 234, west to the section line representing the Infinite Investments LLC easterly property boundary (approximately 1.1 miles). This Task will and the Developer.
OS-5	CR 235 / CR 234 INTERSECTION IMPROVEMENTS – an eastbound to northbound Left-Turn Acceleration and southbound to westbound Right-Turn Deceleration auxiliary lane at the intersection of County Road 235 and County Road 234. This Task will be implemented per “County Agreement” dated 10/25/04 between the County and the Developer.
OS-6	CR 220 TRAFFIC CONTROL PAYMENT – Contribute \$50,000 to address potential ancillary traffic impacts to County Road 220 during construction of Phase 1 of Three Springs. This payment will be implemented per “County Agreement” dated 10/25/04 between the County and the Developer.
OS-7	SDSD WWTP EXPANSION/INTERCEPTOR -South Durango Sanitation District (SDSD) will convert the current wastewater treatment plant (WWTP) to a mechanical system (increasing it’s capacity) and will install a new sewer interceptor from Three Springs to the treatment plant to increase the collection system’s capacity. The new interceptor will accommodate Three Springs through build-out. This condition has been satisfied through developer’s guarantee of a \$4,650,000 bond issue by South Durango Sanitation District in April 2004.
OS-8	GRANDVIEW WATER BOOSTER STATION – PHASE 1 – Grandview Booster station to deliver potable water from waterline terminus to the water storage tank.

R VILLAGE ROADS	
R-1	VILLAGE I, FILING I ROADS, ETC. TO MRMC – Road, water, sewer, drainage, dry utility and landscaping improvements, as shown in Village1 Filing 1 Final Plat.
W VILLAGE WATER SYSTEM	
W-1	TANK TRANSMISSION LINE – Approximately 7700 linear feet of 12” or 16” diameter (depending on location) waterline from the southwestern corner of Three Springs to the water storage reservoir (W-2) per COD approved plans.
W-2	STORAGE TANK / ROAD – 4 million gallon steel water storage reservoir with access road, site grading, controls and associated piping.
DR VILLAGE DETENTION AND DRAINAGE	
DR-1	WILSON GULCH DETENTION AND OPEN SPACE – Stormwater detention/wetlands facilities, including grading, detention pond, outlet structures, and wetlands enhancement improvements.
DR-2	TRAVERSE WASH – Drainage channel improvements, including channel excavation, drop structures, detailed grading, erosion protection, road crossing and forebay improvements at the downstream end of the drainage crossing.
DR-3	CONFLUENCE DROP STRUCTURE – Drainage/erosion drop structures to allow for the routing of drainage flows into the Traverse Wash channel. Improvements will include stepped drop structures, erosion protection, road crossing and underground groundwater cutoff wall.
DR-4	EAST/WEST /outlet facilities and required grading for development required storage NEIGHBORHOOD PARK DETENTION – Stormwater drainage facility including inlet amounts. Ultimate detention pond configuration may include a series of ponds and interconnecting channels.
DR-5	COMMUNITY PARK DETENTION – Stormwater drainage facility to include inlet/outlet facilities and required grading for storage amounts. Ultimate detention pond configuration may include a series of ponds and interconnecting channels.
P VILLAGE PARKS AND OPEN SPACE	
P-1	WILSON GULCH OPEN SPACE – Landscaping, wetlands enhancement and trail system improvements from the area of the forebay south to the Hwy 160/CR 233 intersection.
P-2	CONFLUENCE NEIGHBORHOOD PARK – Grading, landscaping and trail improvements
P-3	EAST/WEST NEIGHBORHOOD PARK – Grading, landscaping, and trail improvements.
P-4	FLORIDA CANAL NEIGHBORHOOD PARK – Grading, landscaping, trail improvements.

P-5	TRAVERSE WASH OPEN SPACE – Landscaping and Trail improvements adjacent to and within the drainage channel from the Three Springs Confluence to the Three Springs Blvd. pedestrian underpass.
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DU	DRY UTILITIES
DU-1	ELECTRICAL SUBSTATION – La Plata Electric Association will construct and maintain an electrical substation adjacent to and underneath the existing 115 kV line on the west side of the Project.
DU-2	RELOCATE 46 kV LINE – LPEA will relocate the existing 46 kV line that runs through Village I (and a portion of the MRMC parcel) to an alignment adjacent to the 115 kV line and tie back into the existing 46 kV line where designated by LPEA and Developer.

EXHIBIT F

Schedule of Residential to Retail Obligations

Developer will not be able to obtain building permits for any residential product in Phase 2 until the Retail shown in Phase 1 has been built

If a national credit grocery store commitment cannot be obtained then the No Grocery Anchor commitment will be used.

If a national credit grocery store commitment is obtained, then the Grocery Anchor commitment will be used.

<u>Product</u>	<u>Phase 1</u>
Residential (cumulative)	1,100 (dwelling units)
 <u>Commitment</u>	
No Grocery Anchor (cumulative)	35,000 (building sq. ft.)
Grocery Anchor (cumulative) (assumes 30K sq. ft. grocery)	74,000 (building sq. ft.)

EXHIBIT G

Schedule of Affordable and Attainable Housing Obligations

Developer will not be able to obtain building permits for any residential units in Phase 2 until the number of Affordable/Attainable housing units shown in Phase 1 below have been built.

<u>Product</u>	<u>Phase 1</u>
Residential (cumulative)	1,100 units
 <u>Commitment</u>	
Affordable Housing	110 units*
Attainable Housing	165 units**

*A minimum of 50% of these units must be provided on-site at Three Springs or the Mercy Hospital campus.

**A minimum of 50% of these units must be provided on-site at Three Springs or the Mercy Hospital campus.

Note: This exhibit to be amended to reflect the use and duration of deed restrictions in accordance with Section 4.09 of the Development Agreement.

EXHIBIT I

DEVELOPER WATER INTERESTS

<u>Water Right/Use</u>	<u>Documents Supporting Developer's Ownership</u>
<u>Florida Project</u> 208 acre-feet (AF)	Florida Water Conservancy District Reallocation Order to Tierra Group, LLC, recorded at Reception No. 841301, La Plata County Clerk and Recorder ("Reallocation Order")
160 AF Florida Project	Special Warranty Deed from Barry Mason and Infinite Investments, LLC to Tierra Group, LLC, dated May 31, 2002, recorded at Reception NO. 831351, La Plata County Clerk and Recorder ("Special Warranty Deed")
<u>Florida Canal Enlargement Co.</u>	
8.4 shares (0.84 cfs)	Certificate 1030A
3.1 shares (0.31 cfs)	Certificate 3507
16.7 shares (1.67 cfs)	Certificate 1014

H:\sps\Tierra Group\Three Springs\Ex G.doc4/11/05

EXHIBIT J

MAINTENANCE RESPONSIBILITIES

(Responsible Party assumes the role of maintenance upon final acceptance by the applicable authority.)

<u>ITEM</u>	<u>RESPONSIBLE PARTY</u>
1. Storm Sewers	City of Durango
2. Detention Ponds	City of Durango (if on public lands); Three Springs (other lands)
3. Storm Water Treatment	City of Durango (if on public lands); Three Springs (other lands)
4. Storm Water Conveyance Facilities	City of Durango (if on public lands); Three Springs (other lands)
5. Wetlands	City of Durango
6. Streets	City of Durango
7. Alleys	City of Durango
8. Parks (less than 5 ac)	Three Springs
9. Parks (more than 5 ac)	City of Durango
10. Public ROW/Median Landscaping (Irrigation, ground cover and shrubs, lawn maintenance)	Three Springs
11. Street Trees	City of Durango
12. Raw Water System	City of Durango
13. Treated Water System	City of Durango
14. Dedicated Trails	City of Durango
15. Non-Dedicated Trails	Three Springs
16. Public Library	City of Durango
17. Fire Station	City of Durango/DFRA
18. Police Station	City of Durango
19. Community Center	Three Springs
20. Community Park	City of Durango
21. Snow Removal/Storage	City of Durango (if on public streets, alleys or publicly owned parking areas); Three Springs on privately owned parking areas

*Three Springs items maybe maintained by the Developer, POA, or a future Metropolitan District following approval under Section 7.03.