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**TWIN BUTTES DEVELOPMENT AGREEMENT**

**BETWEEN**

**CITY OF DURANGO, COLORADO**

**AND**

**LIGHTNER CREEK RANCH, LLC**

\_\_\_\_\_, 2011

Return To:  
GOFF ENG,  
PO Box 97  
Durango, CO  
81301



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Tiffany Lee Parker  
Laplata County Clerk

## LIST OF EXHIBITS

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**TWIN BUTTES DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into this \_\_\_\_\_ day of July, 2011, by and between the CITY OF DURANGO, a Colorado home-rule municipality (the “City”) and LIGHTNER CREEK RANCH, LLC, a Colorado limited liability company (“LIGHTNER CREEK RANCH” or the “Developer”). The City and LIGHTNER CREEK RANCH are collectively referred to as “Parties.”

**RECITALS**

- A. **The Property.** Developer has contracts to purchase approximately 305 acres of land (the “Property”), which the City annexed and which is legally described as Parcels 1, 2, and 3 of the Twin Buttes Addition Annexation to the City of Durango, County of La Plata, State of Colorado, filed for record on \_\_\_\_\_, under Reception No. \_\_\_\_\_ in the real property records of La Plata County, Colorado and which is to be known as the “Twin Buttes Addition”.
- B. **The Project.** Developer desires to develop the Property as a master planned mixed-use community, commonly known as “Twin Buttes” (the “Project”). Developer contemplates that the Project will have a maximum of 595 residential dwelling units, 75 accessory dwelling units, 115,000 square feet of commercial, and up to 25,000 square feet of community buildings. Additionally, Developer contemplates that the Project will include more than 46 acres of land for agricultural use, 7.4 acres designated for park use, approximately 3 acres of land dedicated for school purposes, and overall more than 180 acres of open space. The Project is consistent with general densities and land use designations for the Property as identified in the City’s 2007 Comprehensive Plan.
- C. **Annexation.** The City after due and careful consideration, has concluded that the annexation of the Twin Buttes Addition to the City of Durango and its zoning and development on the terms and conditions herein set forth would enable the City to control development of the area and best serve the interests of the City.
- D. **Project Improvements.** The Developer has agreed to construct certain Public Improvements as more particularly described in Sections 5.06, 6.06, 6.07, 6.09, and 6.11 below.
- E. **Conceptual and Preliminary Development Plans.** On November 17, 2008 the City Council approved Developer’s Conceptual Development Plan for the Project. On December 1, 2009 the City Council approved the Preliminary Plan for Phase I of Twin Buttes. 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 Conceptual Development Plan, approved Preliminary and Final Plans 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, sewer service and the delivery of other 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 Twin Buttes Project, 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 open space dedications that will be provided to the City for its citizens.
- G. CDOT Access Permits.** On or about June 16, 2010, the Colorado Department of Transportation ("CDOT") issued Access Permit No. 510045, which requires Developer to construct certain highway improvements needed to serve a portion of the Project, including without limitation a new intersection between U.S. Highway 160 and the west access and which grants Developer access to CDOT-regulated roadways needed to serve a portion of the Project. On or about May 21, 2010, the Colorado Department of Transportation ("CDOT") issued Access Permit No. 510014 which grants Developer the right to Construction and Emergency Access. A future CDOT Permit for a new, signalized intersection at Mile Marker 81.51 will be required for construction of Phase II of the Project. The CDOT Access Permits, as the same may be amended or supplemented, are referred to herein as the "CDOT Access Permits.". The City, Developer and CDOT are attempting to negotiate a CDOT permit or license between the City and CDOT for the multi-use trail to the extent that in certain locations the intended trail route lies within CDOT right of way. In the event that such permit or license cannot be successfully negotiated, Developer agrees to provide such other trail easement dedications through the Project as are reasonable and necessary to complete the connection of the multi-use trail to Lightner Creek Road (County Road 207).
- H. Public Trail and Open Space Access.** Developer agrees to dedicate and provide public access to trails and open space as more particularly described in Sections 2.03, 3.09, 5.08, 6.11 and 10.06 below.
- I. School District 9-R Dedication.** Developer has agreed to dedicate the School Lot as more particularly described in Section 5.09 below.
- J. Fire Station Lot and Fees and Sprinklers.** Developer has agreed to dedicate the Fire Station Lot as more particularly described in Section 5.13 below and to pay fees as more particularly described in Section 6.12 and sprinkler buildings as more particularly described in Section 4.03.



- K. FEMA.** Developer shall conform to the FEMA requirements regarding development in designated floodways and requirements for floodplain map revisions for any alteration of the floodplain.
- L. Affordable/Attainable Housing.** The Developer has agreed to provide affordable/attainable housing equal to 16% of the total housing units in the Project (excluding accessory dwelling units). The Agreement between the Developer and the Regional Housing Alliance related to affordable and attainable housing (“RHA Agreement”) is attached hereto as Exhibit A
- M. Transfer Fee Covenant.** Developer has agreed to impose a transfer fee covenant on the Project property, a copy of which Transfer Fee Covenant is attached hereto as Exhibit B
- N. Project Phasing.** It is anticipated that the Project will be developed in two phases. Phase 1, for which Preliminary Plan approval was approved on December 1, 2009, and the remaining Property as Phase 2. It is anticipated that there will be multiple final plat filings within each Phase.
- O. Cooperation.** The Parties further acknowledge that implementation of this Agreement will require substantial cooperation between the Parties.

### AGREEMENT

NOW THEREFORE, in mutual consideration of the promises and commitments contained herein 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:

“**Affordable Units**” – Project residential units so defined pursuant to the RHA Agreement.

“**Agreement**” – This Development Agreement.

“**Agricultural Uses**” – The Agricultural Uses shall be as described in Section 3.06 within the areas described on Exhibit C

“**Association**” – The Twin Buttes Association of Owners, a Colorado non-profit corporation.

“**Attainable Units**” – Project residential units so defined pursuant to the RHA Agreement.

“**CDOT**” – Colorado Department of Transportation.



**“CDOT Access Permits”** – The access permits issued or to be 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 to be owned and maintained by the City or other government entities.

**“Community Facilities Matrix”** – The facilities to be owned by the Association, a special or metropolitan district for use by the residents of the Project, their guests and invitees as described in Exhibit D

**“Conceptual Development Plan”** – Developer’s Conceptual Development Plan for the Project approved on November 17, 2008 and amended on November 17, 2008 together with any additional approved amendments thereto.

**“Density”** or **“density”** – The number of units or the amount of square footage in a Phase as approved in the Conceptual Plan and subsequent Phase Preliminary and Final Plans or Filing Final Plats.

**“Design Review Committee”** or **“TBDRC”** – the Project’s design review committee to be created in accordance with and for the purposes identified in Article Eight.

**“Developer”** – LIGHTNER CREEK RANCH, LLC, a Colorado limited liability company.

**“Developer’s Facilities”** – Facilities owned by Developer.

**“DFRA”** – Durango Fire and Rescue Authority.

**“Fire Impact Fee”** – The two stage fee to be paid by Developer in accordance with Section 6.12 to be paid to the City for funding of DFRA.

**“LIGHTNER CREEK RANCH”** – LIGHTNER CREEK RANCH, LLC.

**“Lodging Units”** – units in a public establishment, such as a hotel or motel, available for lease to the public as overnight sleeping accommodations.

**“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.

**“Open Space”** – a category of land use referred to in Sections 3.03, 5.07 and 10.06 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, non-motorized recreation and other purposes as defined by the City.

**“Parties”** – The City and LIGHTNER CREEK RANCH, 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 Improvements”** – The improvements described in the Public Facilities Matrix and the Community Facilities Matrix.

**“Property”** – Developer’s 305 acres of land on which the Project is located and more fully described in Recital A.

**“Public Facilities Matrix”** – The Public Facilities 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.

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

**“Special District”** – 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 and or Association by this Agreement and for such other purposes as may be approved by the City Council.

**“Standards and Guidelines”** – The standards and guidelines that will govern development of the Project including City street, water, sewer, and storm water standards pursuant to existing codes or as otherwise set forth in this agreement and agreed to by the City, as well as the Twin Buttes Design Standards, Sustainability Mandates and Guidelines, Design Mandates and Guidelines and fire suppression, fire mitigation, engineering, street and bridge design standards, all as more particularly set forth in Sections 3.01, 4.04 and 4.05 below, or in approved plans of file with the City in accordance with Preliminary Plan approvals.

**“Twin Buttes”** – Developer’s master planned mixed-use community proposed for development on the Property.

**“Twin Buttes Addition”** – The Property described on the Annexation Plat of the Twin Buttes Addition recorded on \_\_\_\_\_, 2011 at Reception No. \_\_\_\_\_ of the records of the La Plata County, Colorado Clerk and Records office.



**“Water Interests”** – Developer’s water rights and water supply allocation to be used for raw water system, irrigation and aesthetic purposes.

### 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, sustainability 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 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 Project, including but not limited to: the transfer of relevant parcels for construction of trails, contributions toward the upgrade of the intersection at U.S. Highways 160 and 550, the U.S. Highway 160 Tech Center intersection and the two Twin Buttes access road intersections, the construction of internal water, sewer, street and storm drainage improvements, and the extension of off-site utilities to the Twin Buttes area, dedication of open space and trails and access to public lands.
- 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 Community Facilities Matrix and the Public Facilities Matrix attached hereto and incorporated herein as Exhibits D and E.
- F. 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 595 residential units, 75 accessory dwelling units, up to 25,000 square feet of community buildings, and 115,000 square feet of commercial development and approximately 46 acres of agricultural areas. Developer anticipates that commercial development will feature retail, lodging, and office space, interspersed with residential components and agricultural uses. Significant amounts of land shall be set aside for civic uses, including parks, trails, recreation, open space and school.
- 2.02 Phases and Filings.** The Project will be developed in two Phases (Phase 1 and Phase 2) with Preliminary Plan approval for each Phase. Within each Phase there shall be geographical staging areas (“Filings”) each of which will have a separate Filing Final Plat. Portions of each Phase may be developed incrementally, by Filings, 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 eight final plat filings. Following is a description of the projected order of final plat filings:
- A. Phase 1 Filing 1A.** Filing 1A shall be located in the western portion of the Project and will include the agriculture center with office and retail development, pocket parks, a neighborhood park, 122 units of residential housing, drainage and storm water detention facilities, and open space dedications. The size of Filing 1A is projected to be approximately 52 acres and will connect to U.S. Highway 160 at the Project’s west access.
  - B. Phase 1 Filing 1B.** Filing 1B shall be located in the western portion of the Project and will include office and retail development, pocket parks, a neighborhood park, 47 units of residential housing, drainage and storm water detention facilities, and open space dedications. The size of Filing 1B is projected to be approximately 48 acres and will take access to U.S. Highway 160 via the west access.
  - C. Future Filings.** It is anticipated that future final plat filings shall include Phase 1 Filing 2, Phase 1 Filing 3, Phase 1 Filing 4, Phase 2 Filing 1, Phase 2 Filing 2 and Phase 2 Filing 3. The timing and sequence of these future filings shall depend on financial and economic cycles and demand.
- 2.03 Phasing/CDOT Access Permits.** CDOT has issued Access Permit No. 510014 for the emergency/construction access which shall serve strictly as an emergency and construction access for Phase 1 Filings 1A, 1B, 2, 3, and 4. CDOT has issued Access Permit No. 510045 for the west access to the Project connecting US Highway 160 to the west access, which shall serve as primary access for Phase 1 traffic. Upon the commencement of Phase 2, the Developer shall obtain an additional CDOT Access Permit for a fully signalized intersection at approximately Mile Marker 81.51 Left for the East Access to the Project. When the signalized intersection for the East Access is constructed and operational, the Emergency/Construction Access Permit shall terminate and be closed.



It is intended that the negotiations between the City, CDOT and Developer for the CDOT permit or license for the multi-use trail within the CDOT right-of-way will continue until the issuance of such permit or license or determination that such cannot be successfully negotiated, resulting in the obligation of the Developer to dedicate such additional easements as are reasonable and necessary to develop the multi-use trail from the Project east entrance all the way to Lightner Creek Road (County Road 207).

- 2.04 Phasing/Affordable and Attainable Housing.** Other than in Phase 1 Filing 1A, each filing shall contain its proportionate share of affordable and attainable housing in accordance with the RHA Agreement, as amended. The proportionate share for Phase Filing 1A and Filing 1B shall be satisfied cumulatively within those two filings.
- 2.05 Duration of Build Out.** The Parties anticipate that the Project will be developed over the course of the next 40 years.
- 2.06 Transfer Fee Covenant.** Developer agrees to impose transfer fee covenant on all project lots and units in accordance with the Transfer Fee Covenant attached hereto as Exhibit B.
- 2.07 City Standards.** The Project shall be developed in accordance with City development standards or such other standards approved in the Phase 1 and Phase 2 Preliminary Plan approvals regarding roadway or street widths, grades, sidewalks, storm drains, utilities, lighting, park development, trails, water lines, water tank, and sewer lines.
- 2.08 Developer's Commitment.** Developer agrees to develop the Property as set forth in the Standards and Guidelines described herein. 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, Incremental Development and Project Mix**

- 3.01 Design Densities.** The Parties agree that the densities and uses contained in the Conceptual Development Plan, as amended from time to time, are considered to be design densities that constitute the maximum allowed on the Project. The City agrees that Developer shall be entitled to the overall design densities and land uses depicted in the Conceptual Development Plan, as amended from time to time, 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 Filing 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 Design 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.



- 3.03 Variations in Open Space/Land Dedications.** Variations from the acreages portrayed in planning submittals or conceptual plans may occur in actual acreage dedicated for open space or public dedications. However, any variation of more than 10% from acreages represented to be so dedicated shall require approval by the City.
- 3.04 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 Filing, the City may condition approval of a final 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.
- 3.05 Residential Product Mix.** Depending on market conditions, it is anticipated that 47% of the 595 housing units will be multi-family housing and 53% will be single family housing units.
- 3.06 Non-Residential Land Uses.** Allowed non-residential land uses in the Project shall be limited to use on property not designated for single or multi-family residences on the final plat for any filing and shall generally be in accordance with the uses described below:

<u>Commercial</u>	<u>Agricultural</u>	<u>Civic</u>	<u>Community</u>
Commercial Bakery	Raising / Breeding Livestock	Bio-fuel Energy	Outdoor Theater
Grocery	Dairy of Poultry Operations	Water Tank	School
Printing & Publishing	Commercial Nursery	Recycle Collection	Church
Financial Center	Farm Stand	Public Service Equip	Barn
Office - Services Stop	Production Farming		Bus / Commuter
Boutique Hotel (<20 room)	Hobby Farming		Structure Garage
Bookstore	Composting Facility		Community Bldg
Bank (no drive-thru)	Livery Operations		Recreation Center
Eating / Drinking Estb.	4-H Activities and Programs		Park or Playfield
Garden Store	Educational and Environmental		Assisted Living
Beauty Salon			Day Care - child
Building Matl / Hardware			Day Care - adult
Galleries			Museum
Medical Facilities			Art Centers
Real Estate Sales			Library
Liquor / Wine Store			Trails
Dry Cleaners			
Health Club - Fitness			
Specialty Foods			
Art Fabrication - Shop/Retail			
Bed & Breakfast			
Computer sale / service			



- 3.07 Agricultural Use Areas.** The Agricultural Uses shall be limited to the areas as specifically designated on Exhibit C attached hereto. However, it is understood and agreed that agricultural uses shall continue to be allowed upon any unplatted area within the project, subject to reasonable fencing and other requirements for the protection of persons and property as set forth in the approved final plat for individual filings.
- 3.08 Temporary Lumber Mill and Staging Areas.** Developer retains the right to use and maintain the two (2) property locations depicted on Exhibit F for lumber mill operations, construction staging, and materials handling/storage areas at all times during the construction of the Project.
- 3.09 Trail, Forest, and Wildlife Management Plans.** The final Trail, Forest and Wildlife Management Plans completed by Ecosphere Environmental Services in the City files contain multiple recommendations that shall serve as guiding principles for development improvements and on-going management of lands within the Project. As stated in these Plans, they are not intended as an enforcement tool but rather a guide. The Developer agrees to make all reasonable efforts to honor the recommendations and to provide reports to the City, as requested, demonstrating such efforts to honor the recommendations. Specifically, there shall be a prohibition of the use of bird feeders from March 15<sup>th</sup> to November 15<sup>th</sup> of each year. It is expressly acknowledged that the Plan recommendations are not binding on the City with respect to any City property adjacent to or in the vicinity of the Project.

#### **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, including the provisions in Section 10.03 below, or through procedures authorized by this Agreement.
- 4.03 Fire Detection and Suppression.** All residential, commercial and lodging units shall be constructed with interior fire detection and suppression systems. All occupied structures shall be developed with interior sprinkler systems. Fire hydrants and water storage shall be in accordance with approved Preliminary Plan requirements. If changes are made to any road, intersection, structure or types of structures, the fire hydrant locations may need to change accordingly.
- 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 2.07.
- A. Content.** The proposed Standards, Mandates and Guidelines for Twin Buttes are as follows:



1. **Twin Buttes Design Standards (“TBDS”).** The TBDS contain all dimensional building criteria related to Twin Buttes that have been approved and shall be enforced by the City Department of Planning and Community Development during the permitting and inspection process for the building of any buildings in Twin Buttes. If the standards in TBDS conflict with the standards in the City LUDC or other adopted standards then the TBDS standards shall govern. The role of the Twin Buttes Design Review Committee (“TBDRC”) and the process for review of a proposed building and amendment of the TBDS are set forth in the TBDS. Any modification or amendments to the TBDS shall be submitted for review and comment by Director of Planning and Community Development.
  
2. **Twin Buttes Design Mandates & Guidelines (“TBDMG”).** The TBDMG contain all building and design criteria related to Twin Buttes and shall be adopted and enforced by the TBDRC. The submittal requirements and process for TBDRC review are set forth in the TBDMG. The submittal requirements shall include
  - a. an Energy Reduction Intentional Plan (to demonstrate the systems and techniques proposed to meet the 50% IECC requirement; and
  - b. a Solar Fence Analysis; and
  - c. Preconstruction Home Energy Rating System (“HERS”) Index Certificate; and
  - d. Site Analysis Plan as set forth in TBDMG and existing and modified grading, utilities and preliminary hardscaping; and
  - e. Site Staking of corners of proposed building and garage; and
  - f. Preliminary Floor Plans, including proposed square footage; and
  - g. Preliminary Building Elevations.
  
3. **Twin Buttes Sustainability Mandates & Guidelines (“TBSMG”).** The TBSMG contains all building and design criteria related to Twin Buttes energy conservation and sustainability measures and shall be adopted and enforced by the TBDRC for any residential or commercial structure built within Twin Buttes. Provisions include Solar Access, Energy Conservation and a Green Building Checklist.

Upon approval, the above Standards, Mandates and Guidelines 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 Internal Road Design Standards.** The internal road and street design standards shall be the LUDC standards in effect at the time of Conceptual Plan approval except as may be modified and approved in the preliminary plan approval by the City.

### **ARTICLE FIVE -Land and Access 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. However, such shall not constitute a commitment by the Developer to cover City maintenance costs for dedicated lands, easements or improvements.
- 5.02 Categories.** The purposes of public land dedications to be made under this Agreement are categorized as follows: parks, open space, trails, school land, street, storm water detention, utilities (including treated water system and sanitary sewer), 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 Public Facilities Matrix, Community Facilities Matrix, the DFRA Agreement and School District 9-R Dedication.
- 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 preexisting 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 Manager, 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, as reasonably determined by the City, may be denied. The Parties agree that, under appropriate conditions and utilizing proper methods, use of the dedicated lands for the purposes stated above 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 Council. Specific easements for such uses shall be delineated at the time of dedication, subject to approval by the City.

**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. City Parks.**

**1. City Park Descriptions.** The anticipated City parks shall be the Historic Tram Park and the Artisan Core Park for a total acreage amount of approximately 2.3 acres. These City parks shall be open to use by the general public and shall be owned by the City. The City shall approve the design of the City parks, and the parks shall be built in accordance with City-approved standards.

**2. Responsibility for Improvements and Maintenance.** Developer shall be responsible for all improvements to the Historic Tram Park and the Artisan Core Park. Maintenance of the City parks shall be the responsibility of City after acceptance of the park by the City. The Association will be responsible for trash and recycling collection in the City parks.

**B. Neighborhood Parks.** Developer shall build and dedicate 8 neighborhood parks to the Association as depicted on the Conceptual Development Plan for a total acreage amount of approximately 5.1 acres. The City shall approve the design of the neighborhood parks, and the neighborhood parks shall be built in accordance with approved standards.

**1. Park Descriptions and Ownership.** The anticipated neighborhood parks shall be the Garden Overlook, Tipple Park, West Meadows Park, Trestle Park, Loop Park, Solar Park, Rowe Park, and Bungalow Park. These neighborhood parks shall be open to use by the residents of the Project, their guests, and shall ultimately be owned by the Association.

**2. Responsibility for Improvements and Maintenance.** The Developer shall be responsible for the initial improvements to the neighborhood parks. The Association shall be responsible for the maintenance of the neighborhood parks.

**5.07 Open Space Dedications.** All property within the project that is not designated for residential, commercial, civic, community, or agricultural use, shall remain in the ownership of the Developer until the end of the Declarant Control Period (as defined in the Colorado Common Interest Ownership Act) and thereafter shall be dedicated to the Association for ownership and maintenance.

**5.08 Trail Lands Dedications.** The Conceptual Development Plan contemplates and depicts a series of public and publicly-accessible trails within the Project and trail connections to



adjacent properties and public lands. The precise location and acreage amounts associated with such trails shall be subject to further refinement. Developer agrees to dedicate to the City the lands identified in such refinement as public trails. The City shall bear sole responsibility for building and maintaining the trails on the non-project lands, and Developer shall bear that responsibility on Project lands, except for: 1) that portion of the shared use trail from its eastern-most terminus to Historic Tram Park which will be built by the Developer and maintained by the City after dedication acceptance by the City, and 2) that portion of the shared use trail from Historic Tram Park to Lightner Creek Road (County road 207) which shall be built and maintained by the City.

- 5.09 School Land.** Upon the final recording of the Final Plat for Phase 1 Filing 1A, the Developer agrees to dedicate 3 acres of land to the City, as more particularly described on Exhibit G, for subsequent transfer from the City to the School District for school purposes, including the establishment of a school site. Developer agrees to provide written notice to the School District when the Project has obtained certificates of occupancy for 476 dwelling units (80% of 595 dwelling units) to allow time for School District to accomplish facility planning. If within 3 years of receipt of written notice to the School District of obtaining certificates of occupancy for 476 dwelling units, the School District cannot demonstrate that it has completed construction of an elementary school on the dedicated parcel, the Developer shall thereafter have the right, to repurchase the parcel upon payment of the market value of the parcel at the time of conveyance to the City or payment of all in lieu fees for all 595 proposed residential units in the project based upon the in lieu fee in effect at the time of conveyance of the parcel to the City of Durango, whichever is greater.

Such parcel dedication or subsequent payment of in lieu fees shall be in complete satisfaction of Developer obligations to School District 9-R or the City with regard to school site(s) or fees.

- 5.10 Water Rights Dedications.** Developer agrees to dedicate to the Association, 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 H ("Water Interests") upon the termination of the Declarant Control Period.

**A. Developer's Use of Water Interests.** Transfer of the Water Interests to the Association 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, or to use such water at any time for construction and development purposes.

**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.

- 5.11 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, subject to final inspection and acceptance, the City agrees to accept such dedications, as reflected in approved final site plans and final plats and in accordance with the Public Facilities Matrix. The Association shall maintain the stormwater detention and management facilities other than such facilities located upon property dedicated to the City.

- 5.12 Utility Dedications.** Developer agrees to dedicate to the City and, subject to final inspection and acceptance, the City agrees to accept dedications of all treated water facilities and sewer facilities, as reflected in approved final site plans and final plats. 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.
- 5.13 Safety Purpose Dedications or Commitments.** The Parties agree that facilities for fire protection shall be required to meet the needs of Twin Buttes, particularly as development progresses. Developer agrees to dedicate to the City for fire protection purposes a site approximately 1 acre in size, bordered on the west by the western boundary of the Property and located adjacent to Lightner Creek Road.
- 5.14 Public Transit Facilities and Fees.** Developer shall dedicate land to the City, or reserve land, 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 as depicted and in accordance with the timing in the Public Facilities Matrix with bus shelters, and a Public Transit Center in the Artisan Core. In addition, Developer shall make a monetary contribution for transit services as set forth in Section 6.06 E.
- 5.15 Civic Use Dedications.** Developer agrees to dedicate land and build a community center facility not to exceed 8,000 square feet in the West Meadows, Phase 1 Filing 1A and Filing 1B which will be owned and maintained by the Association. The Developer agrees to reserve land for the development of a recreation center, child care facility and central parking in Phase 2 of the Project, in or near the Artisan Core.
- 5.16 Community Facility Dedications.** The Community Facility dedications shall be in accordance with the Community Facility Matrix attached hereto as Exhibit D.

## ARTICLE SIX - Infrastructure/Facility Improvements

- 6.01 Generally.** This Article describes the infrastructure and facilities to be constructed by Developer 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. All facilities shall be constructed as described and in accordance with the schedule set forth in the Public Facilities Matrix.
- 6.02 Engineering Standards.** Except as specifically provided in this Agreement, or in an applicable approved preliminary 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 preliminary plat 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 and applicable public improvement agreements.
- 6.05 Financing/Special District.** Developer anticipates possibly 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 streets, water, sewer, storm drainage, utilities, park, trail, landscaping and recreational improvements and facilities and operation and maintenance thereof required of Developer and or Association 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.

- 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 in the Public Facilities Matrix.
- A. CDOT Access Permit.** Developer shall make the improvements it is required to make under the CDOT Access Permit, including the following:
- 1. U.S. Highway 160/west access intersection.** Construction of a new U.S. Highway 160/west access intersection and associated improvements as required by CDOT and in accordance with the Public Facilities Matrix.
  - 2. U.S. Highway 160 Twin Buttes East Access.** Construction of improvements, including intersection and signalization improvements at the east access to The Project as required by CDOT and in accordance with the Public Facilities Matrix. Construction of this signalized intersection shall begin at the start of Phase II and shall be operative prior to the issuance of any certificate of occupancy in Phase II.
- B. Internal Roads and Streets/No Private Streets.** Developer shall construct all internal roads, streets, and alleys as depicted in approved final plats and in accordance with the Public Facilities Matrix. No private streets shall be constructed within the Property except as specifically approved by the City in



preliminary plans. Private driveways and private access ways may be allowed as approved by the City in the Preliminary Plan approvals.

- C. **Traffic Impact Contribution.** A total payment of \$521,894 will be made by the Developer to the City to increase capacity or control traffic within the City. The payments shall be made concurrent with final plat approval for each filing within the Project, with the amount of the payment to be calculated at a rate of \$1,142 per single family dwelling unit and \$571 per multi-family dwelling unit, as reflected on the approved final plat.
  
- D. **Transit Service; Contribution.** The City and Developer have agreed that regular transit service to the Project shall begin upon the issuance of 150 certificates of occupancy within the Project. Also, upon the issuance of 150 certificates of occupancy within the project, the Developer shall make a payment of \$30,000 to the City Transit Fund (\$17,000 capital and \$13,000 operating) and additional \$30,000 payments each year on the anniversary date of the initial payment for six years (seven years total).
  
- E. **Bicycle Parking.** All site plans for commercial buildings shall include provision for short term bicycle parking which shall in most cases be required to be within fifty feet of the entrance to the commercial structures. Long term bicycle parking shall be provided in large commercial or community facility parking lots, which shall provide for covered, lighted parking racks or similar structures.

**6.07 Treated Water Supply and Storage Facilities.** The Project will require expansion and upgrading of the City's existing treated water supply and storage system as set forth in the Public Facilities Matrix.

- A. **Developer's Responsibilities.** Developer shall be responsible for making the following water facility improvements:
  - 1. **Transmission Line.** It is acknowledged that a portion of the City's water main in or along the US Highway 160 right-of-way between Tech Center Drive and the New Energy Giant Station is presently a six (6) inch line. It is further acknowledged that the six (6) inch line is not adequate to serve the entire Twin Buttes Development. The Developer has agreed to install water saving devices and to take other measures to reduce the water demand from the Twin Buttes Planned Development. Based on the Developer's commitment to reduce water demands within the Planned Development, the City has agreed to waive the requirement for the Developer to install a new waterline along Highway 160 upon the initial filing of a plat for first portion of development. The Developer will install a new ten (10) inch waterline parallel to or in place of all reaches of the six (6) inch water line (as will be determined by the City Engineer) under any of the following conditions:



a. Prior to the filing of a plat for any subdivision or re-subdivision where the sum of residential uses in the Twin Buttes Planned Development includes more that 169 residential dwelling units, or

b. Prior to the filing of a plat for any subdivision or re-subdivision of property within the Twin Buttes Planned Development after the daily water use within the Twin Buttes Planned Development (as measured at the booster water station by means of water meter and tank level measurements) shall have exceeded 100,000 gallons per day on any single day since the signing of this agreement (excluding water from any water line break or other emergency condition or isolated incident), or

c. At any time, as determined by the City Engineer taking into account demonstrated historic useage within Twin Buttes, that a water shortage exists within the Twin Buttes Planned Development occasioned by the peak hourly use within or outside of the Twin Buttes Planned Development which is caused by the lack of water line capacity to the Twin Buttes Planned Development.

\* If the upgrade to the water line is triggered by the platting of residential units in excess of 169 units, prior to the water line upgrade as required in subparagraph (a) above, City and Developer agree to analyze historical water useage within the development, historical weather conditions and other pertinent factors impacting water consumption, and, if appropriate, establish a new threshold relative to the timing of the installation of the 10” waterline.

Such water line installation cost and bond cost, if any, shall be at the expense of the Developer; provided, however, should the City elect to have a line larger than 10” installed, the City shall bear the incremental cost of enlarging the water main beyond a 10” line. The expenditures of the Developer in enlarging the main water line shall be subject to reimbursement in accordance with City regulations and ordinances in effect at the time of such upgrade.

2. **Storage Tank.** Acquisition and installation at location approved by the City of a steel storage tank on the Property needed to serve the Project.
3. **On-site Distribution.** Establishing an on-site treated water distribution system for the Project, including that required to serve those portions of the Property dedicated for Civic use or school purposes. Such system shall be in accordance with approved plans on file with the City for approved preliminary plans.
4. **Pressure Stations.** Installation of pressure reducing valve stations, as necessary to meet City standards.



5. **Water Booster Station.** Installation of a Water Booster Station, as required by the City to serve the Project and adjacent property in accordance with approved plans on file with the City for approved preliminary plans.
  
- B. **Oversizing.** The Parties' acknowledge that the treated water supply and storage facilities being installed by Developer have been designed in conjunction with the City's staff to exceed anticipated requirements of the Project so that treated water service may, at some time in the future, extend beyond the Property.
  
- C. **Recoupment.** The following recoupment mechanisms shall apply to the improvements made under this Section.
  1. **Third Party/Non-Project Use.** The Developer is not entitled to any recoupment from those who may tap into the 10-inch waterline that the Developer installs along US 160 West between Tech Center Drive and the New Energy Giant Station because an existing line currently exists. The Developer may not sell new taps in the new line, however he may contract with others to provide replacement taps in exchange for easement rights for the construction of the new parallel waterline.
  
  2. **Accelerated Completion and Recoupment to City.** The City may need to install extensions of the on-site treated water system needed to serve lands dedicated for City or school purposes in advance of Developer's schedule for such installation. In such event, the City may proceed with construction and installation of such extensions at the City's expense.
  
- 6.08 **Raw Water System.** The Developer shall have the option, but not the obligation, to design, develop, and construct a raw water system ("Raw Water System") for the purpose of delivery of untreated water to certain lands in and outside of the Project for irrigation, aesthetic and agricultural purposes to Project Facilities (defined below). If the Developer elects to proceed with the Raw Water System, it shall solely bear the cost of design, development and construction of the same. Development of a raw water system by the Developer shall be subject to approval by the City. Credits for reduced plant investment fees pursuant to the existing plant investment fee policy of the City will be subject to assurances that any raw water system installed has an adequate plan for long term operation and maintenance.
  - A. **Uses and Facilities to be Served.** The facilities intended to be served by the Raw Water System are:
    1. **Developer's Facilities.** Neighborhood parks, streetscapes/monuments, agricultural lands, and other areas required by the City to be irrigated ("Developer's Facilities") and Developer's rights to use such water for construction and development.
  
    2. **City/Civic Facilities.** City parks, school sites, and other Community/Civic areas within or outside of the Project that would benefit



from use of untreated water ("Civic Facilities"). In the event a Raw Water System is constructed in addition to the primary Treated Water System, a secondary or back-up connection will be provided for City parks for the use of treated water for irrigation during drought conditions or if the Raw Water System becomes inoperable.

3. **Separate irrigation controller.** If a raw water system is to provide to water to community, civic or City facilities or properties, a separate irrigation controller for City facilities shall be provided and the system shall interconnect with the treated water distribution system with appropriate cross connection controls.

**B. Water Interests.** The Parties intend that the Water Interests ultimately dedicated by Developer to the Association shall be the source of water for the Raw Water System.

**C. 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 be the owner/operator for the Raw Water System. The Developer/Association/metro district shall be permitted to charge any users of the Raw Water System, 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.

**D. Reversion of Water Interests.** Should the Raw Water System not be determined to be viable even after the end of the Declarant Control Period, the Association or metro district 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 responsibility to accomplish the wastewater collection improvements as set forth in the Public Facilities Matrix and in accordance with the approved Preliminary Plan Engineering documents on file with the City.

**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 grading and drainage plans approved by the City as part of the preliminary plan.

**A. 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, specifically identifying the Storm Water Improvements to be constructed or installed by the Developer as itemized in Section 6.10 B, below.



**B. 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 and with features to control pollutant discharge in accordance with current City codes.
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.
4. **Storm Water Management Facilities.** Stormwater management shall be in accordance with a construction stormwater permit issued by the State of Colorado.

**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 City Parks in accordance with City development standards and requirements developed and approved in the City's planning review process.
- B. **Trail Construction.** The Developer shall be responsible for construction of all trails within the Project in accordance with the Public Facilities Matrix, except the portion of the shared use path that extends from the Historic Tram Park to County Road 207 (which shall be the responsibility of the City). All such designated trails shall be constructed to standards approved by the City.
- C. **Streetscapes.** Developer shall also be responsible for construction of all streetscapes and landscaped areas and associated lighting and signage as reflected in any approved final plan.

**6.12 Fire Impact Fee; Rate and Purpose; Emergency Dedication Fee; Land Dedication.**

- A. **Impact Fee.** 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 fifty three and nine tenths (53.9) cents per square foot of gross building area covered by that building permit. In the event that La Plata County and Durango Fire and Rescue Authority subsequently adopt a County-wide or Authority or District wide fire protection impact fee in a different amount, the applicant shall pay a fire protection impact fee based upon the latter determined amount, whether such amount is greater or smaller than the amount herein specified.



- B. Developer Emergency Dedication Fee.** Developer agrees to pay to the City the sum of Fifty Thousand Dollars (\$50,000) upon the recording of the Final Plat for Phase 1, Filing 1A, and Fifty Thousand Dollars (\$50,000) upon the recording of Phase 1, Filing 1B which, together with the fire protection impact fee set forth above in this Section (collectively "Fire Fees"), and the Station Site Land Dedication 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 needs. The City shall account separately for revenues collected from the Fire Fees, and distribute them under a separate agreement to the Authority and/or District. These revenues shall be used to fund capital improvements and equipment for emergency services fire protection in the Twin Buttes service area.
- C. Station Site Land Dedication.** Upon recording of the Final Plat for Phase 1 Filing 1A, the Developer agrees to dedicate to the City the parcel described on Exhibit I attached for the exclusive purpose of development of a fire and/or emergency services station. Conveyance from the City to the Authority or District shall be governed by Agreement between the City and the Authority and/or District.

#### **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 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 and approved plans.
- 7.02 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 development standards and guidelines 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 (“TBDRC”).** Developer's internal governance system shall include creation of the TBDRC.
- 8.03 TBDRC Composition.** Among other potential members, the TBDRC shall include: the general manager of Twin Buttes, the planning and design manager of Twin Buttes, an outside architect, a member of the City's planning staff, and a Twin Buttes property owner (once property has been sold).
- 8.04 Applications.** Any person or entity, 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 TBDRC in accordance with submittal requirements. The TBDRC 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.
- Notwithstanding the foregoing, The City shall have the right to operate, maintain, replace and repair all City owned facilities within the Project without TBDRC review or approval, and City standards and guidelines associated with the development or maintenance of improvements in City parks, trails or open space shall apply.
- 8.05 Timely Review.** The TBDRC 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 Sections 8.04 and 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 TBDRC.
- 8.07 City Improvements.** Except as exempted in Sections 8.04 and 8.06 above, the City staff shall submit all plans for above ground City improvements within the Project to the TBDRC, which shall in a timely manner make findings or recommendations regarding the consistency of such plans with the Design Guidelines and approved engineering plans. In the event that the TBDRC determines that such a plan deviates materially from the Design Guidelines or the approved engineering plans, the TBDRC 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 TBDRC's recommendations, the City staff shall first submit the matter to the City Council. The TBDRC 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 TBDRC 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 Filings Development.** The Developer has submitted final plan application for Phase 1 Filings 1A and 1B and intends to follow with multiple individual final plan filings for the remainder of Phase 1. Similarly, Developer intends to submit one preliminary plan application for the entire Phase 2, to be followed by sequential filings for final plat approval collectively encompassing all lands within the approved Filings Phase 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 eleven (11) years following the date of approval by the City Council. Developer may submit written requests to the Planning Director to otherwise extend the validity of a preliminary plan or an individual filing final 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.
- 9.06.1 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.



- 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 Filings that exceeds the ten percent (10%).
- D. Major Circulation Modifications.** A major modification of the circulation patterns between Filings, i.e. addition or elimination of a street, trail, or other pedestrian connection.
- E. Project Boundaries.** Any major change in the location of a transect boundary as depicted in the Conceptual Development Plan.
- 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, Filings 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.

**9.06.2 Minor Conceptual Development Plan Amendments.** Unless the modification or reconfiguration is listed as a Major Amendment in Section 9.06.1, 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 movement of a Project boundary less than five hundred (500) feet within a Filing.
- 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 Filings or inability to handle associated traffic counts in a reasonable fashion.



- 9.07 Refinements of Conceptual Development Plan.** 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.
- 9.08 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, without Unit owner(s) approval, 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.
- 9.09 Minor Amendment Procedures.** All Minor Amendments to the Conceptual Development Plan shall be reviewed and approved or denied by the Planning Director, without Unit owner(s) approval, 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.
- 9.10 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 9.08 above.
- 9.11 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.

### **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 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 vested for a period of forty (40) years with the right to construct and develop the residential units, commercial square footage civic and community facilities in accordance with the Conceptual Development Plan, as amended from time to time, and the schedule 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 make 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 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.
- 10.04 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.
- 10.05 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 City. 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 Public Facilities Matrix, the 9-R Dedication 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 10.06 below.

**10.06 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 2.04, 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, 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.
- D. Fire Protection or Law Enforcement Impact Fees.** In consideration of the obligation to pay the Fire 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 or emergency services.

**10.07 Traffic Impacts.** The City acknowledges that Developer has made substantial commitment to fund traffic and safety improvements in the Project 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 Highway 160 to the west access, and construction other multi-modal transportation improvements.



- 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 or change of use 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 Project area
- B. **Current Fees Applicable.** Pending modification to the existing major street impact fee provisions, builder shall pay the then current major street impact fees delineated in the City Code at the time of application for building permit.
- C. **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 intersection with U.S. Highway 160 and the west access, unless otherwise agreed to by the City Council.

**10.08 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.

**10.09 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 10.02, shall be extended by the length of time during which a City moratorium is in place.



### 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.

**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 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, whichever is later, except as said periods may be extended during a moratorium by operation of Section 10.09.

### ARTICLE THIRTEEN - Enforcement and Remedies

**13.01 By Parties Only.** This Agreement shall be enforceable only by the Parties and not owners of Units or the Association.

**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 by 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  
Email: smithdp@ci.durango.co.us

**B. Developer:**

LIGHTNER CREEK RANCH, LLC  
c/o Eric Flora  
20091 Highway 160 West  
Durango, CO 81301  
Telephone: 970-708-9908



with copies to:

Glenn Pauls  
7676 Colorado Highway 145  
Telluride, CO 81435  
Telephone: 970-728-3540

Denny R. Ehlers  
Crane, Leake, Ehlers, Bruzzese & Ehlers, P.C.  
102 W. 18<sup>th</sup> Street  
Durango, CO 81301  
Telephone: 970-375-7411  
E-Mail: dehlers@durangolaw.com

- 15.02 Effective Upon Receipt.** Notices, filings, consents, approvals and communications 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 nonprevailing 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,





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Tiffany Lee Parker  
Laplata County Clerk

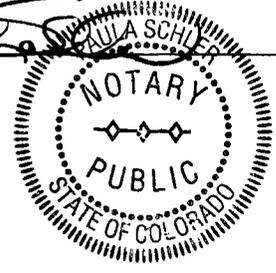
STATE OF COLORADO )  
 ) ss.  
COUNTY OF LA PLATA )

Subscribed and sworn to before me this 30<sup>th</sup> day of August, 2011, by Eric Edmon Flora, Manager, on behalf of LIGHTNER CREEK RANCH, LLC.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: 12/13/2012

  
\_\_\_\_\_  
Notary Public





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Tiffany Lee Parker  
Laplata County Clerk

# **EXHIBIT A**

## **Affordable/Attainable Housing Agreement**



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Tiffany Lee Parker  
Laplata County Clerk

**BEST AVAILABLE IMAGE  
AT TIME OF SCANNING**

## City of Durango Fair Share Proposal Form

### 1. Applicant Information

Name of property owner (person or legal entity): Lightner Creek Ranch LLC

Name of designated contact person for Fair Share: Eric Flora

Mailing address: 150 Rock Point Drive, Unit A, Durango, CO 81301

Phone number: (970) 259-5306

Email address: eflora@lightnercreek.com

Submission date of this proposal to RHA: September 22, 2009

### 2. Property Information

Address of property (or adjacent streets): 20323 Highway 160 West

Tax map number(s): 566126100001; 566123200365; 566123400367;  
566123100035; 566124200053; 566123300370; 566126100022

Number of acres: 597 acres

### 3. Status of This Fair Share Proposal (check all that apply)

Draft submitted to RHA

Recommended to the City by RHA as acknowledge by signature on last page

Recommended by the Community Development Dept as indicated by signature on last page

### 4. Development Approval(s) Being Sought

Please check all that apply. If one or more are checked, Fair Share requirements apply.

Application for annexation unless the site was previously subdivided into residential lots and not being re-platted

Application for rezoning

Application for a subdivision plat, including a plat for residential condominiums consisting of existing or new dwelling units



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Tiffany Lee Parker  
Laplata County Clerk

**BEST AVAILABLE IMAGE  
AT TIME OF SCANNING**

\_\_\_ Application for an increase in density for a property subject to an approved master plan or development plan

\_\_\_ A site-specific development plan including, but not limited to, special use permit, and conditional use permit applications

\_\_\_ Application requesting the extension of or connection to city utilities submitted to the city after December 10, 2008 for residential development located outside the city limits

If none of the items above is checked, no Fair Share Proposal is required.

**5. Number of Residential Units Proposed and Recently Approved**

- a. Number of residential units proposed: 313 Single Family, 139 Townhome, 143 Multi-family = 595 total dwelling units
- b. Number of residential units approved on same site during past 5 years: zero
- c. Total of (a) plus (b): 595 dwelling units

If total is three or less, no Fair Share Proposal is required.

**6. Pre-Submission Conference with RHA**

We have participated in a pre-submission conference with RHA:  X  Yes   No

Date(s) of pre-submission conference(s) with RHA: Multiple

If no pre-submission conference has been conducted, the property owner may not submit a development proposal to the City.

**7. Fair Share Compliance Features of Proposed Development Plan**

	Phase 1 or Entire Development	Future Phases, if Any
a. Total number of residential units	169	426
b. Number of Fair Share homes required assuming no alternative compliance – 16% of line (a) rounded to hundredths of dwelling units	27.04	68.16
c. Proposed number of Fair Share homes to be built and sold – from Section 9 below	27	68
d. Proposed number of Fair Share Homes to be provided by payment of cash in lieu - from Section 10 below	0.04	0.16
e. Proposed numbers of Fair Share Homes to be provided by land	0	0



donation – from Section 11 below		
f. Total number of Fair Share Homes to be provided directly and through allowed alternatives	27.04	68.16

**8. Bedroom Mix of Project “Open Market Homes for Phase 1”**

The following is used to determine the bedroom sizes of Fair Share Homes to be built and sold.

	Studio	1-Bedroom	2-Bedroom	3-Bedroom	4-Bedroom	Total Number
Number of Units		8	22	105		135
Percentage of Units		6%	16%	78%		100%

**9. Pricing and Delivery Schedule for Fair Share Homes To Be Built and Sold**

To be completed by RHA: See Section 8.5.1 for an explanation of the method of distributing Fair Share Homes among Price Tiers and bedroom sizes. The percentage of Fair Share homes of each bedroom size must match the percentages in Section 8 as closely as possible.

Please note: Do not include Fair Share Homes that will be provided through in-lieu payments and land donations. This schedule is required only for the first phase of multi-phase projects.

	Price Tier 1	Price Tier 2	Price Tier 3	Price Tier 4	Total Number	Percentage Of Units
Studio						
1-Bedroom	1		1	0	2	6%
2-Bedroom	2	1	1	1	5	16%
3-Bedroom	9	4	3	4	20	78%
4-Bedroom						
Total number of Fair Share Homes to be built and sold	12	5	5	5	27	100%

I acknowledge that the preceding Fair Share Pricing and Delivery Schedule applies only to Phase 1 of the development if there are multiple phases, and that a Pricing and Delivery Schedule for a



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future phase must be approved by RHA and the City prior to such phases being platted. X Yes  
   No

Following are current Fair Share Home Prices for illustration purposes only. Prices of Fair Share Homes will be those in effect at the time when the Homes are being marketed and sold. Fair Share Home prices and qualifying incomes of buyers are adjusted at least once annually to reflect changes in the area median income, interest rates and other affordability factors as described in the Fair Share Administrative Procedures.

	0 BR	1-2 BR	3 BR	4 BR
Tier 1	\$116,000	\$136,000	\$175,000	\$208,000
Tier 2	\$141,000	\$165,000	\$213,000	\$253,000
Tier 3	\$173,000	\$202,000	\$260,000	\$308,000
Tier 4	\$206,000	\$240,000	\$307,000	\$362,000

**10. Pricing and Delivery Schedule for In-Lieu Payments**

To be completed by RHA: Include any fractional requirements in the cell below. Currently, payments may be made only for fractional units or in lieu of building and selling studio, 1-bedroom and 2-bedroom condos.

Enter below the numbers of Fair Share homes provided through in-lieu payments

	Price Tier 1	Price Tier 2	Price Tier 3	Price Tier 4	Fractional Unit	Total Number	Percentage Of Units
Studio							
1-Bedroom							
2-Bedroom							
3-Bedroom							
4-Bedroom							
Fractional Number					.04		N/A
Total number of Fair Share Homes to be provided by in-lieu payment					.04		100%



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To be completed by RHA: Enter below the illustration dollar amounts of in-lieu payments using current numbers --numbers of units in the schedule above times in-lieu payment amounts in the schedule below. This illustration assumes that current in-lieu fee amounts will apply when the Fair Share Agreement is executed—actual dollar amounts in the Agreement may be higher or lower. (See Attachment 1)

	Price Tier 1	Price Tier 2	Price Tier 3	Price Tier 4	Fractional Unit	Total Dollars
Studio						
1-Bedroom						
2-Bedroom						
3-Bedroom						
4-Bedroom						
Fractional Unit					\$2,607	
Totals						\$2,607

I acknowledge that these in-lieu payment amounts are adjusted periodically and will be adjusted to the amounts in effect at the time of final approval of my development proposal \_\_\_ Yes \_\_\_ No

Current schedule of in-lieu payment amounts

	0 BR	1-2 BR	3 BR	4 BR
Tier 1	\$90,000	\$104,000	\$132,000	\$154,000
Tier 2	\$65,000	\$75,000	\$94,000	\$109,000
Tier 3	\$33,000	\$38,000	\$47,000	\$54,000
Tier 4	\$0	\$0	\$0	\$0
Average for all tiers	\$47,000	\$54,250	\$68,250	\$79,250

Instructions:

- a. When some Fair Share homes are provided, Tier 1-4 amounts above are for Fair Share homes not provided.



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- b. The averages are the numbers to be used when no Fair Share homes are provided.
- c. When no Fair Share homes are provided, a weighted average is calculated based on the bedroom mix in the project.

I acknowledge that the preceding Fair Share Pricing and Delivery Schedule applies only to Phase 1 of the development if there are multiple phases, and that a Pricing and Delivery Schedule for a future phase must be approved by RHA and the City prior to such phases being platted. X Yes  
   No

**11. Land Donation**

Currently, land donations are permitted only as follows:

“Donation of land with all major infrastructure installed to the perimeter (or to be installed at the developer’s cost) suitable for building either a 30-unit senior apartment project meeting the requirements of the federal Section 202 program, or a 60-unit rental apartment project meeting the requirements of the federal Low Income Housing Tax Credit program.”

Number of Fair Share Homes to be provided through a land donation	zero
---	------

**12. Certifications and Signature**

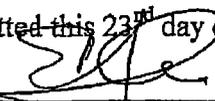
I hereby certify and attest to the following:

I am an authorized representative of the property owner.

I understand that this Fair Share Proposal, when approved, will become part of a recorded Fair Share Agreement in which I will agree to comply with all requirements of the Fair Share Ordinance and Administrative Procedures including but not limited to:

- a. Requirements for design, timing of delivery, marketing and sale of Fair Share Homes,
- b. Required Fair Share Prices and qualifying incomes of buyers that are in effect at the time of marketing and sale of the homes, and
- c. Requirements for timing and amounts of payment of in-lieu payments of in-lieu fees.

Submitted this 23<sup>rd</sup> day of September, 2009 by

  
 \_\_\_\_\_  
 Signature of Owner or Representative

ERIC FLORA  
 \_\_\_\_\_  
 Printed or typed name



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**13. RHA Recommendation for Approval**

I hereby recommend this Fair Share Proposal for approval by the City of Durango

*[Handwritten Signature]*  
Signature of RHA Executive Director

9/24/09  
Date

Jennifer Lopez  
Printed or typed name

**14. Community Development Department Recommendation for Approval**

I hereby recommend this Fair Share Proposal for approval by the City of Durango

\_\_\_\_\_  
Signature of Department Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or typed name



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ATTACHMENT A

Target % bedroom mix	In-Lieu Fee	Weighted Average	Percent of FS unit in- lieu required	In-Lieu Fee Required
0%			0.04	\$2,607
6%	\$54,250	\$3,255		
16%	\$54,250	\$8,680		
78%	\$68,250	\$53,235		
0%	Average	\$65,170		



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# **EXHIBIT B**

## **Transfer Fee Covenant**



## DECLARATION OF COVENANT

---

This DECLARATION OF COVENANT (hereinafter "Covenant") is entered by **Lightner Creek Ranch, LLC**, ("Owner"), effective \_\_\_\_\_, 20\_\_\_\_.

### RECITALS

- A. Owner is the owner of certain property in La Plata County, Colorado, described on **Exhibit 1**, attached hereto and fully incorporated herein by reference, (the "Property").
- B. Owner has obtained the annexation of the Property into the City of Durango, Colorado (the "City").
- C. Owner wishes to make voluntary arrangements through this Covenant to provide a funding source for programs in the City, pursuant to guidelines established by the City, thereby enhancing the character, and diversity of the City as well as providing economic opportunities for current and future residents of the City.
- D. Because such character, diversity and economic opportunities shall add to the value of future owners of Units within the Property, the Owner has determined that it is reasonable and appropriate to partially share the costs thereof by means of a fee expressed as a percentage of future sales prices of lots, tracts or units within the Property.
- E. The rate, exemptions and other attributes of such fee have been determined as set forth below in this Covenant.
- F. The fee provided for herein shall be payable as directed by the Durango City Council as described in Section 5 herein solely for the purposes therein described.
- G. Each person acquiring any interest in any portion, unit, lot or tract within the Property shall be deemed for all purposes to have assented and agreed, as an essential condition of any conveyance to it, to the provisions of this Covenant, to have agreed to comply with this Covenant and to have waived any right to challenge or contest the provisions hereof or to seek any refund or abatement of the fee payable hereunder.



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## COVENANT

The Owner hereby covenants and binds the Property as follows:

1. Covenant. Owner hereby covenants and agrees that, except as provided in Section 3 below, a transfer fee ("Transfer Fee") based on a percentage of the Consideration paid on the transfer of any portion of or interest in the Property shall be due and payable by the grantor at the time of transfer and shall apply to each transfer of any portion of or interest in the Property. The Transfer Fee is one percent (1%) of the Consideration for such transfer. Owner hereby waives, on behalf of itself and its successors in title, any right to challenge the Transfer Fee on any basis.
2. Definitions. For purposes of this Covenant, certain words are defined as follows:
  - a. "Consideration" shall refer to and includes the actual cash paid and/or value of the property delivered, or contracted to be paid or delivered, in return for the transfer of ownership or title to any portion of or interest in the Property and shall include the amount of any liens, mortgage, contract indebtedness, or other encumbrance given to secure the purchase price, or any part thereof, remaining unpaid on such Property at the time of sale. The term does not include the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado, or of a municipal or quasi-municipal governmental corporation or district for taxes, special benefits or improvements.
  - b. "Conveyance" shall refer to and includes any conveyance of ownership or title to any portion of or interest in the Property as evidenced by any deed or instrument or writing wherein or whereby title to such Property is granted or conveyed subject to the exclusions provided herein. Conveyance of "ownership" for the purposes of this Covenant means and includes the transfer of more than fifty percent (50%) of the ownership interest of an entity which has as a principal asset an interest in any portion of or interest in the Property.
  - c. "Final Court Action" means a final order or opinion issued by a court of competent jurisdiction by which the City, any City agent administering such a fund or the Owner is bound, and wherein no appeal can be taken or the time for filing an appeal has expired.
  - d. The term "City" shall mean the City of Durango, Colorado.



- e. The term "Property" shall refer to and includes the real property described in **Exhibit 1** and improvements thereon.

3. Exemptions. The fee imposed by this Covenant shall not apply to:

- a. Any transfer of un-subdivided or vacant land or bulk transfer of the Property, or any portion of thereof, prior to construction of the improvements on such Property or portion of the Property.
- b. Any document wherein the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of the state, is either the grantor or grantee.
- c. Any document granting or conveying title to real property in consequence of a gift of such property, where no Consideration other than love and affection, charitable donation or a nominal compensation is evidenced by the terms of the instrument of transfer.
- d. Any document terminating or evidencing termination of a joint tenancy in real property except where additional consideration or value is paid in connection with such termination, or a decree or agreement partitioning real property held under common ownership unless consideration of value is paid in connection therewith.
- e. Transfers for estate planning purposes where the grantor and grantee are family members or entities in which the individuals or principals (including the settlors of any trust) in the grantor entity are family members of the individuals or principals (including the beneficiaries of any trust) in the grantee, and any transfer of title or change of interest in real property by reason of death.
- f. Transfers made pursuant to mergers or consolidation of corporations or by a subsidiary to a parent corporation which does not result in a change of control.
- g. Any deed or conveyance made and delivered without consideration for the purposes of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments, removing clouds on titles; or granting easements, rights-of-way or licenses.



- h. Any decree or order of a court of record determining or vesting title, including, without limitation, the final award of title pursuant to a condemnation proceeding, a dissolution of marriage proceeding, quiet title proceeding, etc.
  - i. Any transfer of ownership from one or more individuals or from an entity, to an entity where the individuals or principals in the grantee entity are the same as the individuals or the principals in the grantor.
  - j. Any mineral deed or royalty deed.
  - k. Transfers to secure a debt or other obligation, or transfers or releases of property which is security for a debt or other obligation.
  - l. Any deed or conveyance under execution, sale, foreclosure sale under a power of sale or court decree of lien foreclosure; sheriff's deed; public trustee's deed; or treasurer's deed.
  - m. Any lease of real property (or assignment or transfer of any interest in any such lease), provided such lease by its terms does not exceed 25 years. In the event the lease is for more than 25 years, the Transfer Fee shall be paid based on the fair market value of the leased premises (as though the conveyance were in fee simple).
  - n. Any deed, conveyance or transfer of a lot or unit that has been designated as an affordable or attainable lot or unit in accordance with the RHA Agreement.
4. Application for Exemption. In the event that a seller asserts that a transaction is exempt from the fee herein imposed and the documentation of such transaction does not contain language clearly showing its intent and character, the grantor or grantee may apply for and obtain from the City a certificate of exemption, which may be affixed to such deed or instrument of transfer. In the event of a determination by the City favorable to the applicant, any amount previously deposited or so much thereof as may be allowed by the City shall be promptly refunded to the applicant.



5. Receipt and Application of Funds.

All Transfer Fees shall be paid to the City. All amounts received by the City pursuant to this Covenant shall be accounted for in a separate fund and shall not be commingled with other funds of the City, whether managed by the City or an agent selected by the City to manage the funds. A portion of the funds may be used to administer the collection of the fee provided herein. The balance of the funds shall be used as directed by the City.

6. Penalties and Liens.

- a. All Transfer Fees imposed by this Covenant, if not paid when due, shall bear simple interest at the rate of eighteen percent (18%) per annum until so paid. The amount of the fee imposed by this Covenant and interest due thereon is hereby imposed upon the Property or any portion thereof upon the transfer of which said fee is imposed, and if not paid when due, such assessment and interest, if any, shall constitute a lien on the portion of the Property transferred for the amount thereof, which lien shall continue until the amount thereof is paid or until it is discharged of record by foreclosure of a senior lien or otherwise. Such lien may be foreclosed in the same manner as a deed of trust, through the public trustee or through the District Court of La Plata County, Colorado, or by any other means available to the City under law.
- b. Any remedies provided for herein shall be cumulative, not exclusive, and shall be in addition to any other remedies provided by law.

7. Relationship to Land. The Owner acknowledges and agrees that the obligations imposed by this Covenant are related to and touch and concern the Property..
8. Credit for Further Transfer Fee or Charge. In the event any future fee or charge or tax is imposed by the City or La Plata County on the transfers defined herein for which the Transfer Fee is payable for the purpose of funding Affordable or Attainable Housing Programs, full credit shall be given against sums due under such future fee or charge for all payments made hereunder upon such transfer or, in the alternative, if the required payments are equal to or greater than the payments required by this Covenant, then this Covenant shall terminate.
9. Recording. This Covenant shall be recorded in the records of La Plata County, Colorado.
10. Enforcement. This Covenant is made for the express benefit of the owners and occupants of the Property and for the additional express benefit of the City. The



City shall have the right and power to bring suit for either legal or equitable relief for any breach, default or lack of compliance with the provisions of this Covenant, provided that no suit may be filed until the Owner or its successors and assigns is provided with written notice of such breach or lack of compliance by the City or its agent and fails to cure such breach or lack of compliance within ten (10) days after the mailing of such notice. Further, the City shall have the right to refuse to further process and/or deny any building permit, certificate of occupancy or development application with regard to any portion of the Property for which a Transfer Fee is owed and not paid. Owner shall not have any obligation to enforce this Covenant, and the failure of any party to pay any Transfer Fee payable hereunder shall not constitute a default by Owner hereunder or under the Annexation Agreement between Owner and the City.

11. Defense and Cure of Covenant.

- a. In the event of any legal challenge by a third party to the validity or enforceability of any provision of this Covenant, the Owner shall cooperate with the City, as necessary in the defense of such challenge and each party to such challenge shall bear its own costs and attorney fees. During the pendency of any such legal challenge, through and including any Final Court Action, the Owner shall not assert any legal position contrary to the enforceability of this Covenant.
- b. In the event of a Final Court Action determining this Covenant to be invalid or unenforceable, in whole or in part, resulting from such third-party legal challenge, the Owner shall cooperate with the City as necessary, and use its efforts to cure any such legal defects identified by such Final Court Action, and immediately upon such cure, take such actions as may be necessary to render the terms of this Covenant effective and enforceable. No such action shall alter the amount of the Transfer Fee as set forth in Section 1 above, or the purposes for which the funds raised by the Fee shall be expended, as set forth in Section 5 above.

12. Severability. Any determination by any court of competent jurisdiction that any provision of this Covenant is invalid or unenforceable shall not affect the validity or enforceability of any other provision hereof.

13. Statement Regarding Fee. Upon written request by any interested party, the City or the agency or entity designated by the City for management of the funds from Transfer Fees, shall issue a written statement setting forth the amount of any unpaid Transfer Fee with respect to any specific portion of the Property identified in such request. Such statement shall be furnished as soon as reasonably practicable, but in



no event later than 30 days after receipt of the request, and shall be binding on the City. If no statement is furnished to the inquiring party within such 30 day period, then the City shall have no right to assert any claim for any unpaid Transfer Fee with respect to such property which was due as of the date of the request.

- 14. Amendment. This Covenant shall not be amended or terminated without the advance written consent of the City of Durango acting by and through its City Council. If the City provides such consent, no amendment shall be effective unless it is contained in a written instrument signed and acknowledged by the Owner or its successors in the same manner as a deed and duly recorded in the records of La Plata County, Colorado.
- 15. Term. Except as provided herein, the term of this Covenant shall be perpetual.
- 16. Colorado Law. The interpretation, enforcement or any other matters relative to this Covenant shall be construed and determined in accordance with the laws of the State of Colorado.
- 17. Binding on Successors. The provisions of this Covenant shall run with the Property and be binding on all persons who hereafter acquire any interest in the Property, whether as an owner, renter, trustee, or mortgage beneficiary or otherwise.
- 18. Encumbrance. Until terminated, each and every provision contained in this Covenant shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

IN WITNESS WHEREOF, the Owner has executed this Covenant the date first written above.

**OWNER:**  
Lightner Creek Ranch, LLC

By: \_\_\_\_\_  
Name: Eric Edmon Flora  
Title: Manager



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State of Colorado )  
 ) ss.  
County of La Plata )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Eric Edmon Flora, Manager of Lightner Creek Ranch, LLC.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



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**EXHIBIT 1**  
**Legal description of the Property**

**All lots described on final plats recorded for the Twin Buttes Development.**



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# **EXHIBIT C**

## **Agricultural Uses Depiction Map**





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# EXHIBIT D

## Community Facilities Matrix

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**TWIN BUTTES - EXHIBIT COMMUNITY FACILITIES MATRIX**

Shown on "Twin Buttes - Community Facilities Matrix" Sheet Number	PHASE 1					PHASE 2		
	Filing 1A	Filing 1B	Filing 2	Filing 3	Filing 4	Filing 1	Filing 2	Filing 3
9	10	11	12	13	14	15	16	
<b>Description of Improvements</b>								
<b>Roads</b>								
Private Shared Driveways	8	2	1	1	4	2		1
Parking Areas	2	1					1	
<b>Community Facilities</b>								
Transit Stop			2					
Transit Center						X		
Recreation Center							X	
<b>Trails</b>								
Soft Surface	3						2	
Concrete	1	1	1	1				
<b>Parks</b>								
Garden Overlook Park	X							
Tipple Park	X							
West Meadows Park		X						
Loop Park			X					
Solar Park			X					
Rowe Park				X				
Bungalow Park							X	
<b>Gardens</b>								
West Meadows Gardens	X							
<b>Open Space</b>								
Approximate Acreage	8.22	3.89	6.71	6.32	4.53	6.32	18.4	48.5

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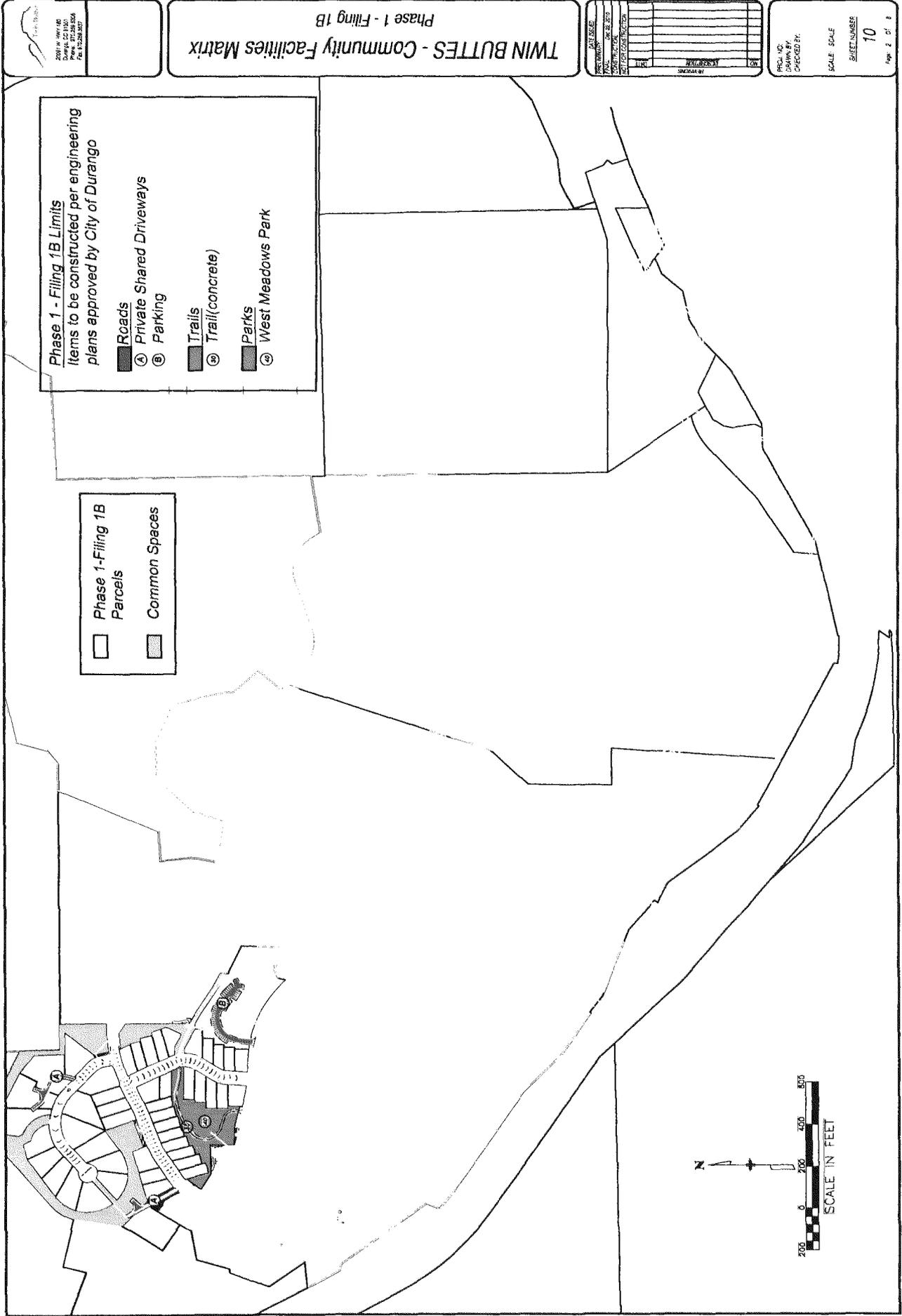




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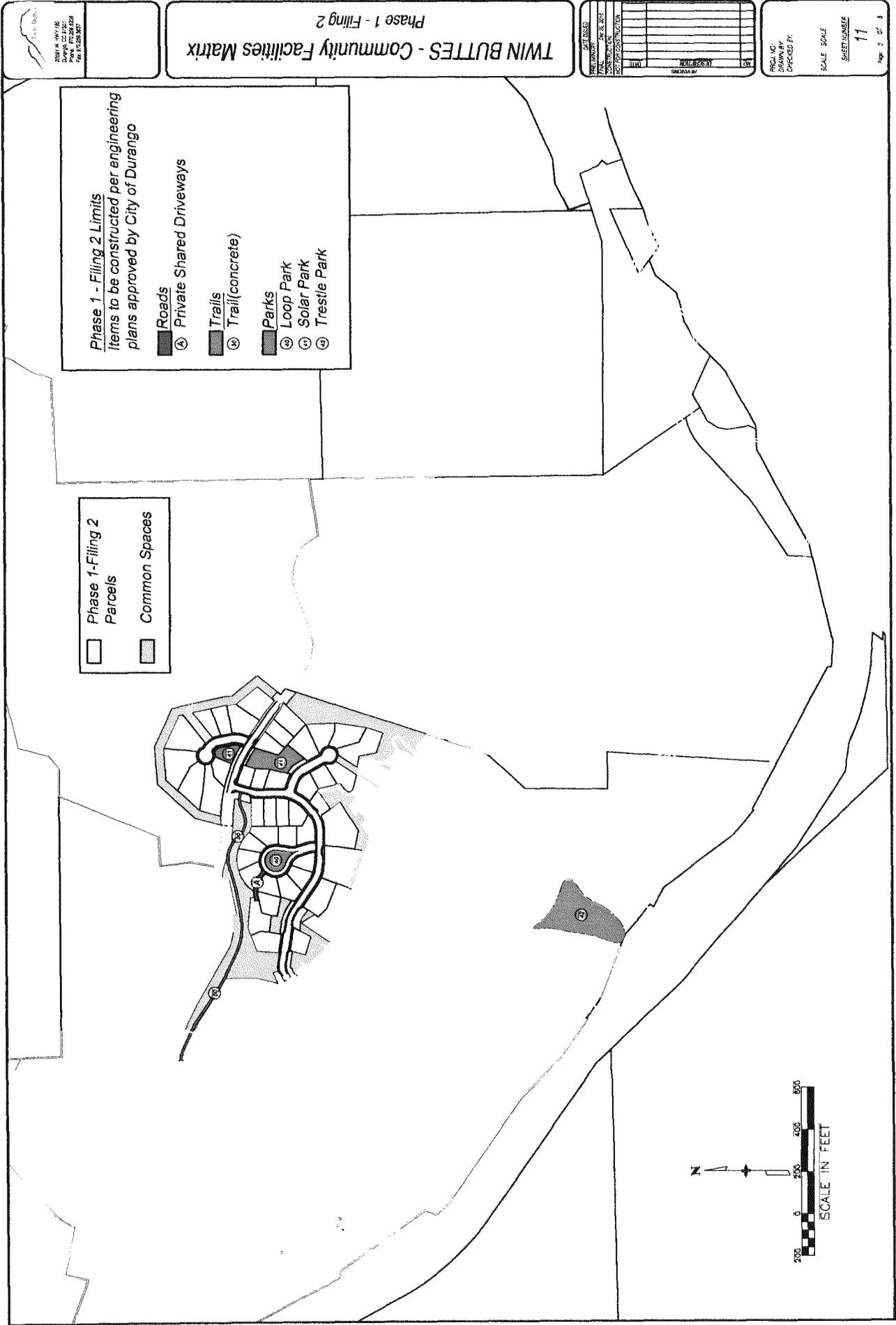
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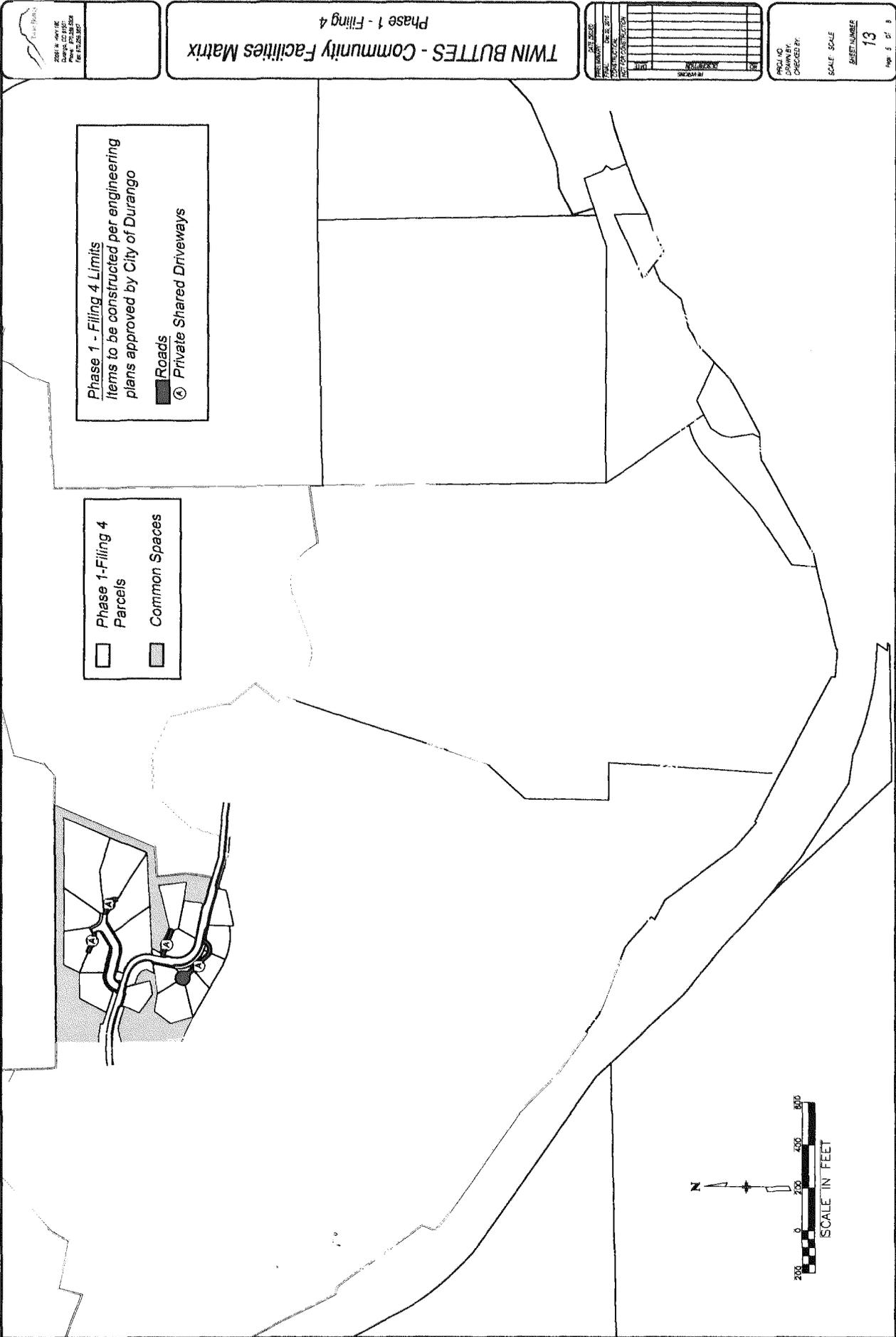




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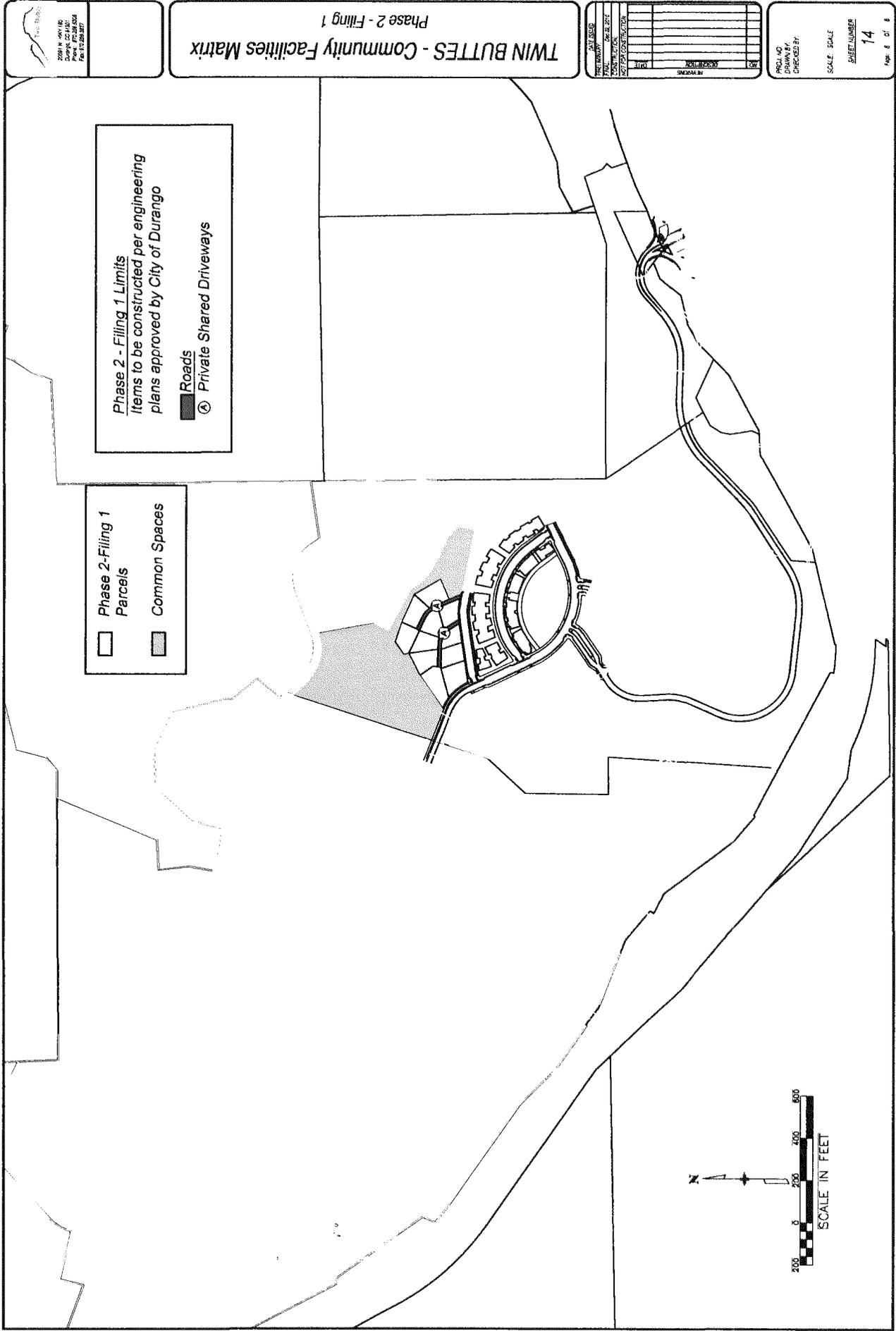




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Twin Buttes  
 2009 W. HWY 160  
 Durango, CO 81301  
 Phone: 970.248.5204  
 Fax: 970.248.9877

TWIN BUTTES - Community Facilities Matrix  
 Phase 2 - Filing 1

PROJECT NUMBER	1035974
DATE	09/19/2011
DRAWN BY	T.L.P.
CHECKED BY	T.L.P.
SCALE	AS SHOWN

PROJ. NO.  
 DRAWN BY  
 CHECKED BY  
 SCALE: SCALE  
 SHEET NUMBER  
 14  
 Page 6 of 6







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# **EXHIBIT E**

## **Public Facilities Matrix**

TWIN BUTTES - EXHIBIT PUBLIC FACILITIES MATRIX

Shown on "Twin Buttes - Public Facilities Matrix" Sheet Number	PHASE 1					PHASE 2		
	Filing 1A	Filing 1B	Filing 2	Filing 3	Filing 4	Filing 1	Filing 2	Filing 3
	1	2	3	4	5	6	7	8
<b>Description of Improvements</b>								
<b>Roads</b>								
US Hwy 160/Perins Avenue Highway/Intersection Improvements	X							
Construction/Emergency Access(gravel)	X							
Perins Avenue Bridge	X							
Lightner Creek Avenue	X			X		X		
Larkspur Street	X							
Penstemon Place	X							
Perins Avenue	X	X			X	X		X
Wood Rose Lane	X							
Water Tank Temporary Access	X							
Water Tank Access	X							
Wild Iris Avenue		X						
Bell Flower Court		X						
Paintbrush Street			X					
Cinquefoil Place			X					
Prairie Violet Place			X					
Arnica Place			X					
Wild Chives Court				X				
Glacier Lily Court					X			
Twin Buttes Avenue						X		
Road A						X		
Road B						X		
Road C							X	
Road D							X	
Road E							X	
Road F							X	
Road G							X	
Road H							X	
Road I							X	
Alley 1							X	
Alley 2							X	
Alley 3							X	
Road J								X
US Hwy 160/Twin Buttes Avenue Highway/Intersection Improvements						X		
<b>Infrastructure</b>								
Booster Station	X							
Water Tank	X							
Detention Pond J1	X							
Detention Pond G1	X							
Potable Water System*	X	X	X	X	X	X	X	X
Sanitary Sewer System*	X	X	X	X	X	X	X	X
Storm Drainage System*	X	X	X	X	X	X	X	X
<b>Trails</b>								
Shared-Use Path 1(gravel)	X							
Shared-Use Path 2(concrete)	X							
Shared-Use Path 3(concrete)	X							
Trail 1(concrete)	X							
Trail Underpass	X							
Shared-Use Path 1(concrete)			X					
<b>Parks</b>								
Historic Tram Park	X							
Artisan Core Park						X		

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\*Infrastructure to be Installed according to Engineering Plans approved by City of Durango



















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AGR 9/19/2011 4:04 PM  
RS\$461.00 D\$0 00

Tiffany Lee Parker  
Laplata County Clerk

# **EXHIBIT F**

## **Lumber Mill and Staging Property Depiction Map**





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# EXHIBIT G

## School Property Description





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Laplata County Clerk

# **EXHIBIT H**

## **Schedule of Developer Water Interests**

**All water rights decreed in Case No. 07CW92 (District Court, Water Division 7) on  
January 29, 2009.**



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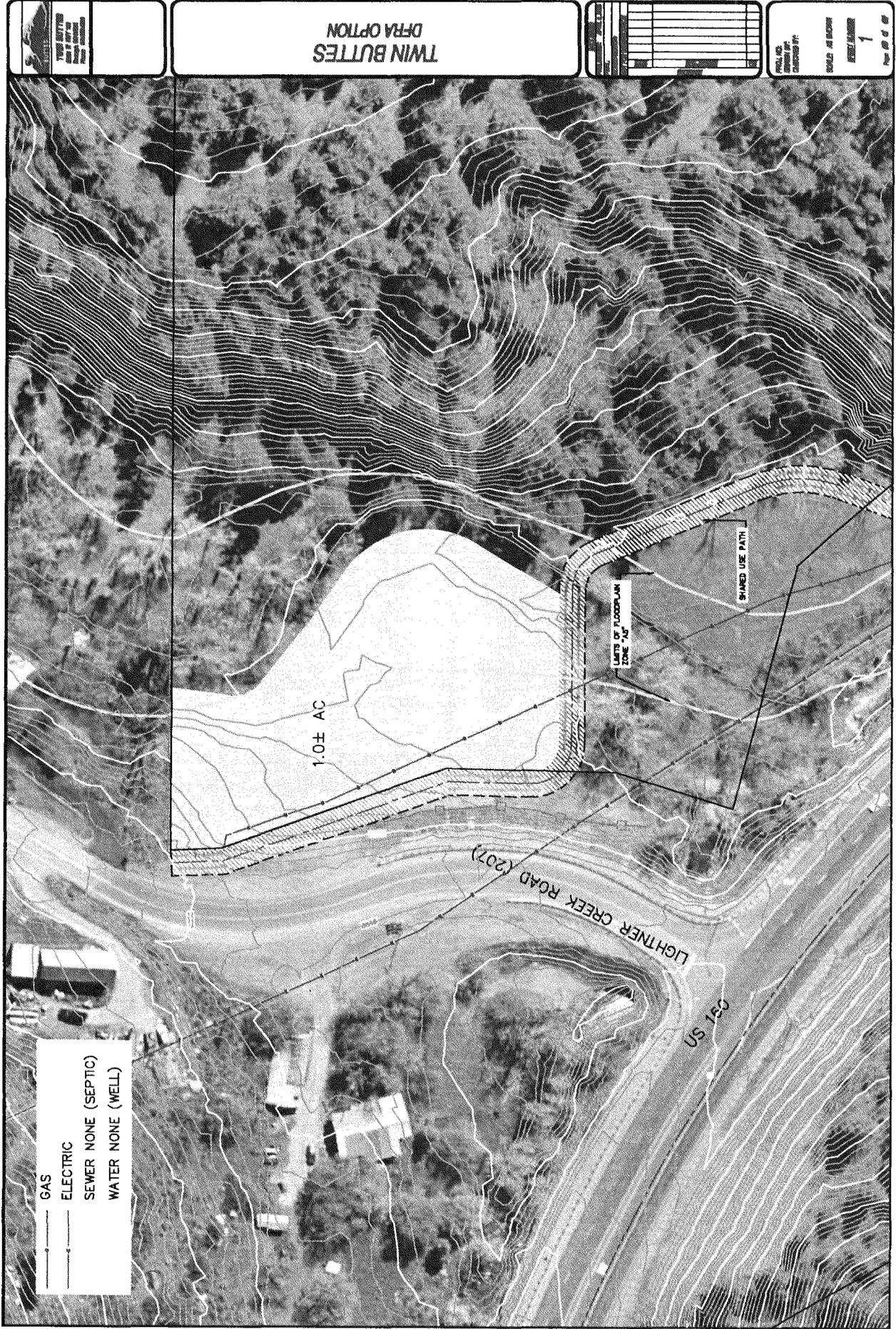
Tiffany Lee Parker  
Laplata County Clerk

# **EXHIBIT I**

## **Station Site Land Dedication Map**



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