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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

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- B. Transfer Fee Covenant
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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 15th to November 15th 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