TWIN BUTTES THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT

BETWEEN

CITY OF DURANGO, COLORADO

AND

TWIN BUTTES OF DURANGO, INC.
Successor to Lightner Creek Ranch, LLC

Return to: Twin Buttes of Durango, Inc.
690 Twin Buttes Avenue
Durango, CO 81301
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TWIN BUTTES THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS TWIN BUTTES THIRD AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is entered into this 1st day of March, 2018, by and between the CITY OF DURANGO, a Colorado home-rule municipality (the "City") and TWIN BUTTES OF DURANGO, INC., a Colorado corporation, successor to LIGHTNER CREEK RANCH, LLC, a Colorado limited liability company, ("Twin Buttes of Durango" or the "Developer"). The City and Twin Buttes of Durango are collectively referred to as "Parties."

RECITALS

The City and Twin Buttes of Durango previously entered into that certain Twin Buttes Development Agreement recorded in the records of the La Plata County, Colorado Clerk and Recorder’s office on September 19, 2011 at Reception No. 1035974 (the first page of which was re-recorded on November 30, 2011 at Reception No. 1039167) and the First Amended and Restated Development Agreement recorded February 5, 2016 at Reception No. 1107817, and the Second Amended and Restated Development Agreement recorded July 14, 2017 at Reception No. 1130787 (collectively "Original Development Agreement"). This Third Amended and Restated Development Agreement supersedes and replaces in its entirety the Original Development Agreement.

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 Annexation to the City of Durango, County of La Plata, State of Colorado, filed for record on September 19, 2011 under Reception No. 1035975 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 655 residential dwelling units, 135 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 an additional approximately 3 acres offered for dedication to Animas High School, 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. The First Amended Conceptual Plan was approved by the City on November 17, 2008 and the Second Amended Conceptual Plan was approved by the City on September 19, 2011 and the Third Amended Conceptual Plan and Amended Phase 1 Preliminary Plan were approved by the City Council on May 20, 2014. 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 have negotiated 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. (See Section 2.03)
H. **Public Trails 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. Additionally, Developer has agreed to offer for dedication to Animas High School the parcel 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 Agreement.** The Developer has agreed to provide affordable/attainable housing equal to 16% of the total housing units in the Project. The Twin Buttes Affordable/Attainable Housing Agreement between the Developer and the City replaces the Fair Share Proposal signed by Developer and the City in 2009, and may be amended from time to time.

M. **Transfer Fee Covenant.** Developer has agreed to impose a transfer fee covenant on the Project property, which Covenant document was recorded February 5, 2016 at Reception No. 1107817 in the records of the La Plata County Clerk and Recorder.

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 Amended Phase 1 Preliminary Plan approval was approved on May 20, 2014, 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 Twin Buttes Affordable/Attainable Housing Agreement, as amended from time to time.
“Agreement” – This Twin Buttes Third Amended and Restated Development Agreement as further amended from time to time.

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

“Animas High School” – The state chartered high school to which the Developer has contracted to convey the additional school parcel in accordance with the Agreement between Animas High School Building Corporation and Developer dated March 21, 2013, as amended on October 1, 2014 and as further amended on July 20, 2017.

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

“Community Facilities Matrix” – The facilities to be owned by the metropolitan district for use by the residents of the Project, their guests and invitees, as described in Exhibit B.


“Density” or “density” – The number of units or the amount of square footage in a Phase as approved in the Conceptual Plan and subsequent Preliminary and Final Plans or Filing Final Plats, and as depicted on the Development Allocation Record maintained by the Developer in accordance with Section 3.01E below.

“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” – Twin Buttes of Durango, Inc., a Colorado corporation, f/k/a Lightner Creek Ranch, LLC, a Colorado limited liability company.

“Development Allocation Record” – A record of all allocated and unallocated Residential and Accessory Dwelling Units as well as Commercial and Community building square footage maintained by the Developer with updates provided to the City.
“Developer’s Facilities” – Facilities owned by Developer.

“DFPD” – Durango Fire Protection District.

“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 DFPD.

“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.

“Metro District” – Twin Buttes Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado.

“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 non-motorized recreation and other purposes as defined by the City.


“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.

“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 approximately 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 C to this Agreement.

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

“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 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 on 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 September 19, 2011 at Reception No. 1035975 of the records of the La Plata County, Colorado Clerk and Recorders office.

“Water Interests” – Developer’s water rights and water supply allocation which may 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 B and C.

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 655 residential units, 135 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, pocket parks, a neighborhood park, a mix of single family and multi-family residential housing, drainage and storm water detention facilities, School District 9-R parcel and Animas High School parcel, fire station parcel and open space dedications. The size of Filing 1A is projected to be approximately 43.9 acres and will connect to U.S. Highway 160 at the Project’s west access.

B. **Future Filings.** It is anticipated that future final plat filings shall include Phase 1, Filing 1B, Phase 1 Filing 2, Phase 1 Filing 3, Phase 1 Filing 4, Phase 2 Filing 1, Phase 2 Filing 2, Phase 2 Filing 3 and Phase 2 Filing 4. 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.

Following City approval and recording of the final Plats for Filing 1A and Filing 1B, and approval of design for the multi-use trail by the City and CDOT, Developer shall dedicate such additional easements as are reasonable and necessary to develop such multi-use trail from the Project east entrance to Lightner Creek Road (County Road 207).

2.04 **Phasing/Affordable and Attainable Housing.** Affordable and attainable housing shall be provided in accordance with the Twin Buttes Affordable/Attainable Housing Agreement with the City, as amended, more particularly described in Recital L above.

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 a transfer fee covenant on all project lots and units in accordance with the terms and conditions contained within the Transfer Fee Covenant, as may be amended from time to time.

2.07 **City Standards.** The Project shall be developed in accordance with City development standards or such other standards approved in the Phase 1 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 (specifically, 655 residential dwelling units, 135 accessory dwelling units, 115,000 square feet of commercial and 25,000 square feet of community buildings) 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.

A. Twin Buttes Design Density Classifications
   a. Residential (655 total units approved)
   b. Accessory Dwelling Unit (135 total units approved)
   c. Commercial (115,000 square feet approved)
   d. Community (25,000 square feet approved)

B. Twin Buttes Land Use Categories
   a. Residential, includes:
      • Single Family: One or two residential structure(s), attached or detached, owned jointly or separately, per lot; and
      • Multi Family: Three or more residential units contained within one or more attached or detached structures per lot
   b. Commercial: Only commercial uses; see Sec. 3.06 below for further definition
   c. Community: Only Community uses; see Sec. 3.06 below for further definition
   d. Variable: Combination of Residential and/or Commercial and/or Community
   e. Mixed: Combination of Residential AND Commercial
   f. Common Area: Open space owned by the Twin Buttes Metropolitan District

C. Allocation of Design Densities by Land Use Category. Developer shall allocate design densities to the specific parcels based on their designated Land Use Category. In Filing 1A, Developer designates Residential Lots 15, 16, 17, 18, 36, 37, 43, 44, 45, 46 and 47 as eligible for construction of two (2) Residential structures, attached or detached, owned jointly or separately, and Residential Lot 48 as eligible for construction of three (3) Residential structures, attached or detached, owned jointly or separately. Owners of these lots must receive Twin Buttes Metropolitan District Design Review Committee approval and required City of Durango approvals and must obtain adequate infrastructure capacity. For all future filings, Land Uses and density designations shall be identified on the Preliminary Plan for each filing. For Variable lots, the design density shall be defined and tracked in the Development Allocation Record described in Section E. below.

D. Lot Reconfigurations. Lot line adjustments, lot combinations, lot subdivisions and changes in Land Uses and Density designations (e.g., Residential Single Family to Mixed Use) are subject to appropriate City process and approval, however, lot line adjustments and lot combinations may be administratively approved by the Community Development Director.

E. Density Records. Developer (through the TBDRC) shall maintain a record of all allocated and unallocated Residential and Accessory Dwelling Unit Density as well as Commercial and Community building square footage. A Development Allocation Record shall be maintained by the Developer with updates provided to the City.
F. Affordable, Attainable or Workforce Housing. Affordable, Attainable or Workforce Housing residential units shall be an allowed use in any Land Use Category described in 3.01(B) above.

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 Major Site Plan Review. All site plans and reviews for new construction or redevelopment containing more than 10,000 square feet of gross floor area, as defined in the Durango Land Use and Development Code, shall be reviewed and approved by the Community Development Director, and by the Twin Buttes Design Review Committee.

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:

<table>
<thead>
<tr>
<th>Commercial</th>
<th>Agricultural</th>
<th>Civic</th>
<th>Community</th>
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<tbody>
<tr>
<td>Commercial Bakery</td>
<td>Raising / Breeding Livestock</td>
<td>Bio-fuel Energy</td>
<td>Outdoor Theater</td>
</tr>
<tr>
<td>Pharmacy</td>
<td>Dairy or Poultry Operations</td>
<td>Parks and Trails</td>
<td>Music Stage</td>
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<td>Grocery</td>
<td>Commercial Nursery</td>
<td>Water Tank</td>
<td>School</td>
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<tr>
<td>Printing &amp; Publishing</td>
<td>Farm Stand</td>
<td>Recycle Collection</td>
<td>Church</td>
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<td>Financial Center</td>
<td>Production Farming</td>
<td>Public Service Equip</td>
<td>Barn</td>
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<td>Office – Services</td>
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<td>Bus / Commuter</td>
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<td>Bookstore</td>
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<td>Bank (no drive-thru)</td>
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<td>Eating / Drinking Estb.</td>
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<td>Garden Store</td>
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<td>Beauty Salon</td>
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10
Building Matl./Hardware
Galleries
Medical Facilities/Spa or Therapy
Real Estate Sales
Liquor/Wine Store
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 A 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 D 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 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. Any increase in the size of the water taps from the standard domestic water tap size to accommodate necessary fire flow requirements for fire suppression systems for individual buildings shall not result in an increase in the water and sewer plant investment fees for such building.

4.04 **Twin Buttes Design Standards and Guidelines.** 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 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 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 the Community Development Director.

2. **Twin Buttes Design Guidelines ("TBDG").** The TBDG 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 TBDG. The submittal requirements are included in the TBDG.

3. **2015 IECC Green Building Code REScheck Certification.** As part of the Design Review Process, all construction applications must include a REScheck Certificate of Compliance demonstrating a passing score utilizing the 2015 version of the REScheck software (provided free by the U.S Department of Energy, see [www.energycodes.gov/rescheck](http://www.energycodes.gov/rescheck)). In the event the City adopts a more current energy code than 2015, the REScheck Certificate of Compliance must demonstrate a passing score utilizing the version of the REScheck software that meets the energy code in effect at the time of construction.

Upon approval, the above Standards 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 and specifications 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 the standards that have been approved by the City in the Phase 1 Preliminary Plan.

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 DFPD 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. Any application for such use shall include the responsibility for maintenance for such 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 2.5 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, including responsibility for trash and recycling collection in the City parks.

B. **Neighborhood Parks.** Developer shall build and dedicate 7 neighborhood parks to the Metro District as depicted on the Third Amended Conceptual Development Plan for a total acreage amount of approximately 5.3 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 Pauls 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 Metro District.

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

5.07 **Metro District Dedications.** All property within the project that is not designated for residential, commercial, civic, community, agricultural, or variable use, shall remain in the ownership of the Developer and shall be dedicated to the Metro District for ownership and maintenance at the time of recording the respective final plats containing such property.
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 approximately 3.2 acres of land to the City, as more particularly described on Exhibit E, 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 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 655 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.

Developer has further agreed to convey approximately 3 acres of land, more particularly described on Exhibit F attached hereto, to Animas High School Building Corporation in accordance with the terms of the Agreement between Animas High School Building Corporation and Developer dated March 21, 2013.

5.10 **Water Rights Dedications.** Developer agrees to dedicate to the Metro District, 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 G ("Water Interests") incrementally with each final plat filing (proportionately with the use intended within such final plat area).

A. **Developer's Use of Water Interests.** Transfer of the Water Interests to the Metro District 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 Metro District shall maintain the storm water 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.** Developer agrees to dedicate to the City for potential fire protection purposes and other public uses 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 D.

5.15 **Civic Use Dedications.** Developer agrees to dedicate land for a community center facility in the West Meadows, Phase 1 Filing 1A which will be owned and maintained by the Metro District. The Developer agrees to reserve land for the development of a recreation center and child care facility in Phase 2 of the Project, in or near the Artisan Core, in accordance with the Community Facilities Matrix.

5.16 **Community Facility Dedications.** The Community Facility dedications shall be in accordance with the Community Facilities Matrix attached hereto as Exhibit B.

**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, potential 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 regarding standards and specifications and engineering practices approved in the Phase 1 Preliminary Plan approvals, or in a future approved preliminary plan or final plan or plat, the installation of all infrastructure shall be undertaken according to the Phase 1 Preliminary Plan approvals 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, except as otherwise agreed. 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 has obtained City approval for and has formed four metropolitan districts 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 by this Agreement and for such other purposes as may be approved by the City Council.

The City agrees that it will not include or consent to the inclusion of the Property in any other 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 2 and shall be operative prior to the issuance of any certificate of occupancy in Phase 2.

B. **Internal Roads and Streets/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. Private streets may be constructed within the Property as specifically approved by the City in preliminary plans or at the plat stage. Private driveways and private access ways may be allowed as approved by the City in preliminary plans or at the plat stage.

C. **Traffic Impact Contribution.** A total payment of $213,000.00 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 recording for each filing within the Project, with the amount of the payment to be calculated at a rate of $405 per single family dwelling unit and $223 per multi-family dwelling unit, as reflected on the approved final plat.

D. **Transit Service Contribution.** The City and Developer have agreed that on demand 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 than 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 usages of 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 usage 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 three (3) water booster station pumps, 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. The City agrees to pay for the third of three water booster pumps for initial installation. Developer shall reimburse the City for the cost of the third pump at the time of the upgrade of the 6-inch water transmission line as required in Section 6.07(1) above.

**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, Developer 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 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 Metro District shall be the source of water for the Raw Water System.

C. Raw Water Charges. Upon completion of a Raw Water System, the Metro District shall be the owner/operator for such Raw Water System. The 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.

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.** Storm water management shall be in accordance with a construction storm water 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 City of Durango and Durango Fire Protection District subsequently adopt a City-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 H attached for the purpose of development of a fire and/or emergency services station and other public uses. 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 the Metro District 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.** Metro District 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.
8.02 **Design Review Committee (“TBDRC”).** Metro District’s internal governance system shall include creation of the TBDRC.

8.03 **TBDRC Composition.** Among other potential members, the TBDRC shall include: the manager of Metro District or other person appointed by the Metro District Board, a planning and design professional designated by the Metro District Board, an architect designated by the Metro District Board, 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 Standards and 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 amended 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 Community Development Director to otherwise extend the validity of a preliminary plan or an individual filing final plan, and the Community Development 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 Community Development 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. **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.

D. **Project Boundaries.** Any major change in the location of a Phase boundary as depicted in the Conceptual Development Plan.

E. **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.

F. **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 Community Development Director, without Unit owner(s) approval, after consultation with other City departments, as appropriate. If the Community Development Director and Developer cannot reach agreement on a proposed Minor Amendment, the Community Development Director or Developer may request that the Planning Commission consider and decide such application. Either the Community Development 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 Community Development 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 Community Development 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, City Staff or Developer 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 from the date of mutual execution of this Third Amended and Restated Development Agreement 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 of 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 the Third Amended Conceptual Plan, 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. Metro District obligations to maintain facilities for which such maintenance responsibility exists and other Developer obligations under this Agreement that are intended to survive such individual sale of a subdivided parcel shall survive such sale, and Metro District or Developer, as appropriate 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 Metro District.

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 facsimile, 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:

City Attorney  
949 East Second Avenue  
Durango, CO 81301  
Telephone: 970-375-5007  
Email: dirk.nelson@durangogov.org
B. Developer:

Twin Buttes of Durango, Inc.
Attn: Bob Delves, CEO
690 Twin Buttes Avenue
Durango, CO 81301
Telephone: 970-259-5306
Email: bob@twinbuttesofdurango.com

with copies to:

Glenn Pauls
694 Twin Buttes Avenue
Durango, CO 81301
Telephone: 970-318-0113

Lindsey Nicholson
Goldman, Robbins, Nicholson & Mack, P.C.
679 E. 2nd Avenue, Suite C
P.O. Box 2270
Durango, CO 81302
Telephone: 970-259-8747
E-Mail: Nicholson@grn-law.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 facsimile, 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, firm, organization or corporation not a party hereto, and no other person, firm, organization or corporation shall have any right or cause of action hereunder.

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

CITY OF DURANGO

By: [Signature]

Title: CITY MANAGER

Twin Buttes of Durango, Inc.
By its President, Glenn Pauls

[Signature]

ACKNOWLEDGEMENTS

STATE OF COLORADO  
COUNTY OF LA PLATA  

Subscribed and sworn to before me this 24th day of March, 2018, by [Signature], the City Manager of the City of Durango, on behalf of the City of Durango.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: [Signature]  
(kathleen J. Schneyers)  
Notary Public
STATE OF COLORADO  )
COUNTY OF LA PLATA  ) ss.

Subscribed and sworn to before me this 16th day of March, 2018, by Glenn Pauls, President, on behalf of Twin Buttes of Durango, Inc.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: 12/18/20

[Signature]
Notary Public

[Notary Information Stamp]
EXHIBIT A
Agricultural Uses Depiction Map
LIST OF EXHIBITS

A. Agricultural Uses Depiction Map
B. Community Facilities Matrix
C. Public Facilities Matrix
D. Lumber Mill and Staging Property Depiction Map
E. 9-R School Property Description
F. Animas High School Property Description
G. Schedule of Developer Water Interests
H. Station Site Land Dedication Map
EXHIBIT A
Agricultural Uses Depiction Map
EXHIBIT B
Community Facilities Matrix
<table>
<thead>
<tr>
<th>Description of Improvements</th>
<th>PHASE 1</th>
<th>PHASE 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Filing 1A Filing 1B Filing 2 Filing 3 Filing 4</td>
<td>Filing 1 Filing 2 Filing 3 Filing 4</td>
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<td>Roads</td>
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<td>Private Shared Driveways</td>
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<td>Community Facilities Land Dedications</td>
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<td>Recreation Center</td>
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<tr>
<td>Daycare Center</td>
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<td>Community Facilities</td>
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<td>Community Center</td>
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<td>Trails</td>
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<td>Pauls Family Park</td>
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<td>Trestle Park</td>
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<tr>
<td>Loop Park</td>
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<td>Solar Park</td>
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<td>Rowe Park</td>
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<td>Bungalow Park</td>
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<tr>
<td>Agricultural Areas</td>
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<tr>
<td>Twin Buttes Gardens</td>
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<tr>
<td>Open Space</td>
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<td>Approximate Acreage (Including Parks, Agricultural Areas &amp; Common Area)</td>
<td>25.64 24.00 5.40 4.42 5.00</td>
<td>7.04 7.91 9.75 17.66</td>
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EXHIBIT C
Public Facilities Matrix
<table>
<thead>
<tr>
<th>Description of Improvements</th>
<th>PHASE 1</th>
<th>PHASE 2</th>
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<tbody>
<tr>
<td>Roads</td>
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<tr>
<td>US Hwy 160/Tipple Avenue Highway/Intersection Improvements</td>
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<td>Construction/Emergency Access(gravel)</td>
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<td>Tipple Avenue Bridge</td>
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<td>Lightner Creek Avenue</td>
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<td>Larkspr Street</td>
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<td>Penstemon Place</td>
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<td>Wild Iris Avenue</td>
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<td>Bellflower Court</td>
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<td>Wall Flower Court</td>
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<td>Wild Chives Court</td>
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<td>Paintbrush Street</td>
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<td>Cinquiefoil Place</td>
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<td>Prairie Violet Place</td>
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<td>Glacier Lily Court</td>
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<td>CDS Court</td>
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<td>Brook Crest Lane</td>
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<td>Salmonberry Court</td>
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<tr>
<td>Porter Avenue</td>
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<tr>
<td>Twin Buttes Avenue</td>
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<td>Cliffrock Avenue</td>
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<td>Mountain Laurel</td>
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<td>Calico Bush Street</td>
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<td>Alley 1</td>
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<td>Alley 2</td>
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<tr>
<td>Alley 3</td>
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<tr>
<td>US Hwy 160/Twin Buttes Avenue Highway/Intersection Improvements</td>
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<td></td>
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</tbody>
</table>

**Public Facilities Land Dedications**

| Transit Center              | X       |         | X |
| Public Facilities           |         |         | X |
| Transit Stops               |         |         | X |

**Infrastructure**

| Booster Station             | X       |         |         |
| Water Tank                  | X       |         |         |
| Detention Pond J1           | X       |         |         |
| Detention Pond G1           | X       |         |         |
| Potable Water System*       | X       | X       | X |
| Sanitary Sewer System*      | X       | X       | X |
| Storm Drainage System*      | X       | X       | X |

**Trails**

| Shared-Use Trail 1(gravel) | X       |         | X |
| Shared-Use Trail 2(concrete) | X       |         | X |
| Shared-Use Trail 3(concrete) | X       |         | X |
| Trail 1(concrete)           | X       |         | X |
| Trail Underpass             | X       |         | X |
| Shared-Use Trail 1(concrete) | X       |         | X |

**City Parks**

| Historic Tram Park          | X       |         |         |
| Artisan Core Park           |         |         | X |

*Infrastructure to be installed according to Engineering Plans approved by City of Durango*
EXHIBIT D
Lumber Mill & Staging
Property Depiction Map
EXHIBIT E
9-R School Property Description
LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN SECTION 23, TOWNSHIP 35 NORTH, RANGE 10 WEST,
N.M.P.M, LA PLATA COUNTY, COLORADO, WITHIN PARCEL 3R, MCINTYRE RANCH BOUNDARY
ADJUSTMENT, ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD MARCH 2,
2012 UNDER RECEPTION NO. 1043559 AND RECORDED MARCH 2, 2012 UNDER RECEPTION
NO. 1043560, COUNTY OF LA PLATA, STATE OF COLORADO AS MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHENCE THE E-E-E 1255 CORNER OF SAID SECTION 23 BEARS
SOUTH 58 DEGREES 41 MINUTES 03 SECONDS EAST, A DISTANCE OF 656.58 FEET;
THENCE SOUTH 53 DEGREES 32 MINUTES 40 SECONDS WEST, A DISTANCE OF 207.17 FEET;
THENCE NORTH 55 DEGREES 11 MINUTES 39 SECONDS WEST, A DISTANCE OF 392.99 FEET;
THENCE NORTH 42 DEGREES 54 MINUTES 22 SECONDS EAST, A DISTANCE OF 106.55 FEET;
THENCE NORTH 17 DEGREES 59 MINUTES 01 SECONDS EAST, A DISTANCE OF 234.57 FEET;
THENCE SOUTH 69 DEGREES 38 MINUTES 48 SECONDS EAST, A DISTANCE OF 144.52 FEET;
THENCE ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT WITH A DELTA ANGLE OF 03 DEGREES 20
MINUTES 16 SECONDS AND A RADIUS OF 170.00 FEET, A DISTANCE OF 128.59 FEET, THE LONG CHORD
BEARS SOUTH 46 DEGREES 58 MINUTES 40 SECONDS EAST, A DISTANCE OF 125.54 FEET;
THENCE SOUTH 29 DEGREES 16 MINUTES 31 SECONDS EAST, A DISTANCE OF 88.59 FEET;
THENCE SOUTH 01 DEGREES 17 MINUTES 23 SECONDS WEST, A DISTANCE OF 13.42 FEET;
THENCE SOUTH 25 DEGREES 16 MINUTES 31 SECONDS EAST, A DISTANCE OF 191.80 FEET TO THE POINT OF
BEGINNING.
EXHIBIT F
Animas High School Property Description
LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN SECTION 23, TOWNSHIP 35 NORTH, RANGE 10 WEST, I.R.M.P.M. LA PLATA COUNTY, COLORADO, WITHIN PARCEL 3R, MCINTYRE RANCH BOUNDARY ADJUSTMENT, ACCORDING TO THE RECORDED PLAT THEREOF FILED FOR RECORD MARCH 2, 2012 UNDER RECEPTION NO. 1043559 AND RECORDED MARCH 2, 2012 UNDER RECEPTION NO. 1043560, COUNTY OF LA PLATA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHENCE THE E-E-1266 CORNER OF SAID SECTION 23 BEARS SOUTH 82 DEGREES 35 MINUTES 82 SECONDS EAST, A DISTANCE OF 672.16 FEET;

THENCE SOUTH 67 DEGREES 33 MINUTES 29 SECONDS WEST, A DISTANCE OF 246.72 FEET;

THENCE SOUTH 89 DEGREES 30 MINUTES 59 SECONDS WEST, A DISTANCE OF 273.10 FEET;

THENCE NORTH 00 DEGREES 22 MINUTES 01 SECONDS EAST, A DISTANCE OF 391.40 FEET;

THENCE NORTH 42 DEGREES 54 MINUTES 22 SECONDS EAST, A DISTANCE OF 138.95 FEET;

THENCE SOUTH 65 DEGREES 11 MINUTES 39 SECONDS EAST, A DISTANCE OF 421.52 FEET;

THENCE SOUTH 20 DEGREES 21 MINUTES 31 SECONDS EAST, A DISTANCE OF 166.47 FEET TO THE POINT OF BEGINNING.
EXHIBIT G
Schedule of Developer Water Interests:

All water rights decreed in Case No. 07CW92 (District Court, Water Division 7) on January 29, 2009.
EXHIBIT H
STATION SITE LAND DEDICATION MAP