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GUNNISON RISING ANNEXATION AGREEMENT

DECEMBER 3, 2009

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TABLE OF CONTENTS

		Page
Section 1.	**Parties**	**1**
Section 2.	**Recitals**	**1**
Section 3.	**Definitions**	**2**
Section 4.	**Agreement**	**5**
Section 5.	**Annexation of Property**	**5**
Section 6.	**Conditions to Annexation of Property**	**5**
6.1	Final Approval	5
6.2	Annexor's Right to Disconnect	6
6.3	No Recording Until Conditions Satisfied	6
6.4	Failure of Conditions	6
6.5	Legal Defects in Annexation	6
Section 7.	**Phasing Residential and Non-Residential Development**	**7**
7.1	Utilities Required	7
7.2	Phasing Plan	8
7.3	No Obligation to Develop	8
Section 8.	**Land Dedications**	**8**
8.1	Emergency Services	8
8.2	Gunnison Watershed School District RE-1J	9
8.3	Gunnison Cemetery District #1	9
8.4	Open Space	10
8.5	Public Park Space	10
8.6	Trail Corridors	10

8.7 Public Transportation 12
8.8 Public Works 12
8.9 Housing 13

Section 9. Services 13
9.1 Utility Installation 13
9.2 REA Requirements 13
9.3 Acceptance of Service 14
9.4 Continuity of Electric Utility Service 14

Section 10. Improvements 14

Section 11. Utilities 14
11.1 Highway Crossings 14
11.2 Off-Site Utility Extensions 14
11.3 Utility Easements 15
11.4 Electric Distribution System 16
11.5 Domestic Potable Water System 16
11.6 Sewage Collection System 17
11.7 Raw Water Irrigation System 17
11.8 Storm Water Control System 17
11.9 Small Utilities 18
11.10 Refuse Collection 18
11.11 Construction by District 18

Section 12. Landscaping 18

Section 13. Metropolitan Districts 19
13.1 Formation 19
13.2 Disclosure of Mill Levy 19

Section 14. Environmental Resource Protection 19
14.1 Wetlands 19
14.2 Flood Plains 19
14.3 Sage Grouse Habitat Protection 19
14.4 Storm Water Management 20

Section 15. Water Rights and Supply Quality 20
15.1 Water Rights 20

	15.2	Water Supply Quality	21
Section 16.	**Transportation and Traffic**		**22**
	16.1	Street Dedications	22
	16.2	Reserved Easement	23
	16.3	Street Maintenance	23
	16.4	Off-Site Improvements	23
	16.5	State Highway Access	24
	16.6	Street Improvements	25
	16.7	PUD Plan	25
	16.8	Connections with Western State College	26
Section 17.	**Economic Agreements**		**29**
	17.1	Real Estate Transfer Assessment	29
Section 18.	**Off-Site Lands**		**30**
	18.1	North Parcel	30
	18.2	Avigation Easement	31
Section 19.	**Cooperative Drafting**		**31**
Section 20.	**Recording**		**31**
Section 21.	**Protective Covenants**		**31**
Section 22.	**Default and Remedy Provisions**		**31**
	22.1	Default by the City	31
	22.2	Default by the Annexor	32
	22.3	Notices of Default	32
	22.4	Remedies	32
Section 23.	**Vested Rights**		**33**
	23.1	Zoning	33
	23.2	Permitted Uses/Design Standards	33
	23.3	Vesting of Property Rights	33
	23.4	Property Rights Vested	34
	23.5	Term of Vested Property Rights	34
	23.6	Compliance with General Regulations	35
	23.7	City Publication of Vested Property Rights Notice	35

Section 24.	Representations	35
Section 25.	Severability	36
Section 26.	Future Acts	36
Section 27.	Notice	36
Section 28.	Applicable Law	37
Section 29.	Jurisdiction and Venue	37
Section 30.	Attorneys' Fees	37
Section 31.	Cooperation in Defending Legal Challenges	37
Section 32.	Waiver	38
Section 33.	City Findings	38
Section 34.	Assignment and Assumption	38
Section 35.	Binding Agreement	38
Section 36.	Force Majeur	38
Section 37.	Subordination of Deeds of Trust	39
SIGNATURE PAGES		40-44
EXHIBIT A	THE PROPERTY	45-46
EXHIBIT B	PARKS AND TRAIL MASTER PLAN	47
EXHIBIT C	PUD ZONING PLAN MAP	48
EXHIBIT D	WATER RIGHTS	49

EXHIBIT E	DEVELOPMENT PHASING PLAN	50
EXHIBIT F	UTILITIES MASTER PLAN	51
EXHIBIT G	MEMORANDUM OF AGREEMENT	52-70
EXHIBIT H	RETA DECLARATION	71-86
EXHIBIT I	NORTH PARCEL LEGAL DESCRIPTION	87
EXHIBIT J	AVIGATION EASEMENT	88-94

GUNNISON RISING ANNEXATION AGREEMENT
DECEMBER 3, 2009

This Annexation Agreement ("Agreement") is dated December 3, 2009, and is executed on January ___, 2009, at the City of Gunnison, Gunnison County, Colorado.

Section 1. Parties. The parties to this Agreement are:

City of Gunnison, Colorado, a Colorado Home Rule Municipality, hereafter termed "City".

and

Gunnison Valley Partners, LLC, a Colorado limited liability company, **Donna R. Bratton,** and **Gunnison Gateway, LLC,** a Colorado limited liability company, hereafter collectively termed "Annexor".

Section 2. Recitals. The following recitals apply to this Agreement:

2.1 The Annexor is the owner of certain lands contiguous to the City commonly described as "Gunnison Rising" and more particularly described on attached Exhibit A (the "Property").

2.2 The Annexor desires to have the Property annexed to the City and the City desires to annex the Property on the terms and conditions set forth herein.

2.3 Under Colorado law, the City may not annex the Property without the consent of the Annexor.

2.4 Pursuant to the petition for annexation, the Annexor has petitioned the City to annex the Property, but only under the terms and conditions as set forth in this Agreement.

2.5 The development of the Property will require large investments in infrastructure improvements and public facilities (which may include offsite improvements) including, without limitation, roads, drainage facilities, water lines and appurtenances, sewer lines and appurtenances, electrical lines and facilities, irrigation ditches and facilities, and storm water management facilities that will serve the needs of the Property and the

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City. Completion of these improvements and facilities will require substantial investments by the Annexor. Such investments can be supported only if there are assurances that the development of the Property pursuant to this Agreement, once approved by the City, will be allowed to proceed to ultimate completion as provided in this Agreement.

2.6 The legislature of the State of Colorado adopted Sections 24-68-101, et seq., of the Colorado Revised Statutes (the "Vested Property Rights Statute") to provide for the establishment of vested property rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning. The Vested Property Rights Statute authorizes the City to enter into development agreements with landowners providing for vesting of property development rights.

2.7 The development of the Property in accordance with this Agreement will provide for orderly growth in accordance with the policies and goals set forth in the City Master Plan, ensure reasonable certainty, stability and fairness in the land use planning process, stimulate economic growth, secure the reasonable investment-backed expectations of the Annexor, foster cooperation between public and private sectors in the area of land use planning, and otherwise achieve the goals and purposes for which the Vested Property Rights Statute was enacted. In exchange for these benefits and other benefits to the City contemplated by this Agreement, together with the public benefits served by the orderly development of the Property, the Annexor desires to receive the assurances that it may proceed with development of the Property pursuant to the terms and conditions contained in this Agreement.

Section 3. Definitions.

3.1 "Agreement" shall mean and refer to the Gunnison Rising Annexation Agreement.

3.2 "Annexor" shall mean and refer to the parties indicated above termed as Annexor and their heirs, successors, assigns and designees.

3.3 "Annexation Petition" shall mean and refer to the Amended Petition for Annexation of the Property filed with the City on May 22, 2009.

3.4 "Association" shall mean and refer to one or more owners associations comprised of the owners of lots or other parcels of land and improvements located within

the Property that may be organized for the purpose of maintaining certain common areas, implementing design review procedures, and otherwise addressing the common needs and interests of the residents and property owners within the Property.

3.5 "CDOT" shall mean and refer to the Colorado Department of Transportation.

3.6 "City" shall mean and refer to the City of Gunnison, Colorado, a Colorado Home Rule Municipality.

3.7 "City Council" shall mean and refer to the City Council of the City of Gunnison, State of Colorado.

3.8 "City Master Plan" shall mean and refer to the City of Gunnison 2007 Master Plan adopted April 25, 2007.

3.9 "City Loop Trail" shall mean and refer to the trail corridors identified as the "City Loop Trail" on the Parks and Trails Master Plan contained in the PUD Plan.

3.10 "Crossing" shall mean and refer to all bridges, culverts, or other types of facilities or structures used to cross roadways, drainage ways, or storm drain areas.

3.11 "District" shall mean and refer to a metropolitan district or other type of special district organized pursuant to Title 32 of the Colorado Revised Statutes (or any successor statutes) for part or all of the Property.

3.12 "Electric System" shall mean and refer to the lines and equipment necessary to provide electric service to the Property.

3.13 "Irrigation System" shall mean and refer to the ditches and appurtenances required for the delivery of non-potable water to the Property.

3.14 "Parks and Trails Master Plan" shall mean and refer to the Parks and Trails Master Plan as attached hereto as Exhibit B and incorporated herein by this reference which has been approved by the City Council, as it may be amended from time to time with City Council approval.

3.15 "Property" shall mean and refer to the land described as Gunnison Rising in the Annexation Petition for inclusion to the City and which is legally described in Exhibit A attached hereto and incorporated herein by this reference.

3.16 "PUC" shall mean the Public Utilities Commission.

3.17 "PUD" shall mean and refer to a Planned Unit Development zoning classification that permits a designed grouping of varied and compatible land uses all within one contained development or subdivision.

3.18 "PUD Plan" shall mean and refer to the Gunnison Rising PUD Development Standards which were approved by the City Council on December 22, 2009, as amended from time to time with City Council approval in accordance with applicable City procedures and requirements. Attached hereto as Exhibit C and incorporated herein by this reference is the Gunnison Rising PUD Zoning Plan Map.

3.19 "RETA Declaration" shall mean and refer to the covenants to be recorded against the Property as described in Section 17.1 below, the form of which is attached hereto as Exhibit H and incorporated herein by this reference.

3.20 "Sewer Interceptor Line" shall mean and refer to sewer lines twelve (12) inches and larger in diameter.

3.21 "Streets" shall mean and refer to residential, commercial, collector, minor and principal arterials, highways, expressways and roadways.

3.22 "Water Rights" shall mean and refer to all of the conditional and absolute adjudicated water rights that are associated with the Property and described on Exhibit D attached hereto and incorporated herein by this reference.

3.23 "Water Transmission Lines" shall mean and refer to water lines twelve (12) inches and larger in diameter.

3.24 "Zoning Map" shall mean the map entitled "Gunnison Rising PUD Zoning" contained in the PUD Plan.

Section 4. Agreement. In consideration of the premises and mutual covenants contained in this Agreement, the legal sufficiency of which are hereby expressly acknowledged, the City and the Annexor agree to the terms and conditions set forth in the Agreement.

Section 5. Annexation of Property. The Annexor agrees to the annexation of the Property (the "Annexation") and the City agrees that it will annex the Property only in accordance with the terms and conditions of this Agreement and that the City and the Annexor agree to be bound by such terms and conditions.

Section 6. Conditions to Annexation of Property. Annexation of the Property to the City shall not be effective until the following conditions have been met: (a) the Annexor and the City have mutually executed and delivered this Agreement; and (b) Final Approval has occurred. The City and the Annexor agree to execute this Agreement upon approval by City Council and prior to Final Approval occurring.

6.1 Final Approval. As used herein, the term "Final Approval" means that all of the following have occurred: (a) the ordinance or resolution approving this Agreement shall be approved by the City; (b) the effective date of the ordinance approving the Annexation shall have occurred; (c) the ordinance or resolution approving the zoning of the Property pursuant to this Agreement shall have been approved by City Council; and (d) the effective date of the ordinance or resolution approving the zoning of the Property shall have occurred. If any petition for a referendum or a legal action in a court of law seeking to reverse or nullify any of such approvals is duly and timely filed, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended pending the outcome of the referendum election or legal action, as the case may be. If the court proceeding or referendum challenge to the annexation results in disconnection of the Property from the City, then this Agreement and all provisions contained herein shall be null and void and of no further force or effect and all property, including water rights, conveyed to the City by Annexor pursuant to this Agreement shall be reconveyed by the City to the Annexor upon such termination of this Agreement, which obligation shall survive any termination of this Agreement. If the court challenge, if any, and the

referendum challenge both fail, then Annexor and the City shall continue to be bound by all terms and provisions of this Agreement and all time periods set forth in this Agreement shall commence on the date of the referendum election. Annexor shall not be obligated to convey any property to the City until Final Approval has occurred.

6.2 Annexor's Right to Disconnect. Annexor's consent to annexation of the Property is contingent on obtaining the City's final, non appealable approval of the zoning of the Property to PUD in accordance with a PUD Plan that is acceptable to Annexor. If such approval is not granted by the City or if the City's approval of the annexation of the Property and/or such application and the PUD zoning is appealed within applicable time periods whether through referendum or legal action filed in a court of law, then the Property, at Annexor's request, shall be disconnected from the City and the City shall take all necessary actions to accomplish such disconnection as quickly as is legally possible.

6.3 No Recording until Conditions Satisfied. The City shall not cause the ordinance approving Annexation of the Property or the annexation maps of the Property to be recorded with the Clerk and Recorder of Gunnison County pursuant to § 31-12-113(2)(a)(ii)(A), Colorado Revised Statutes, until this Agreement has been fully executed by all parties hereto. Any such recording prior to mutual execution of this Agreement by all parties shall be void and of no force or effect.

6.4 Failure of Conditions. Until Final Approval has occurred, this document shall constitute an offer by the Annexor to enter into this Agreement (notwithstanding the parties' mutual execution and delivery of this document) and the Annexation shall not be effective. Consequently, at any time before such conditions are satisfied, the Annexor may withdraw the annexation petition for the Property and the Annexor may withdraw its offer to enter into this Agreement. If the Annexor withdraws the annexation petition for the Property, withdraws its offer to enter into the Agreement, or Final Approval does not occur, then this Agreement shall be deemed void and of no force or effect, the Property shall be deemed not annexed to the City, and the vested property rights described in this Agreement shall be deemed not established.

6.5 Legal Defects in Annexation. In the event that the annexation of the Property or any portion thereof is voided by final action of any court, the City and the

Annexor shall cooperate to cure the legal defect which resulted in disconnection of the Property, and upon such cure this Agreement shall be deemed to be an agreement to annex the Property to the City pursuant to Section 31-12-121, Colorado Revised Statutes. Annexor may reapply for annexation as and when the Property becomes eligible for annexation as determined by the City.

Section 7. Phasing Residential and Non-Residential Development.

7.1 Utilities Required. No portion of the Property shall be allowed to be occupied without full utility systems necessary to serve such portion of the Property being installed by the Annexor and services being provided by the City. Notwithstanding the foregoing, any residences or other facilities located within the Property on the date this Agreement is mutually executed by the parties and which is served by water well and/or individual sewage disposal system ("ISDS") on such date may continue to use such water well and/or ISDS until City water and sewer service is extended to within four hundred (400) feet of the boundary of the property which utilizes the water well and/or ISDS, at which time the owner of the residence or other facility shall connect the residence or other facility to the City water and sewer lines, cease using the water well (and integrate the well into the City water system or close the well, at the City's election) and properly abandon such ISDS in compliance with applicable regulations. Further, if the Colorado Division of Wildlife ("DOW") acquires a portion of the Property and elects to commence construction and use of its facilities prior to the time Annexor has installed water and sewer lines to the boundary of the property on which DOW constructs its facilities (the "DOW Property"), the DOW may install and utilize a water well and an ISDS with a capacity not to exceed 1,950 gallons per day, until Annexor has extended water and sewer lines to within four hundred (400) feet of the boundary of the DOW Property, at which time DOW shall connect its facilities to such water and sewer lines, cease using the water well (and integrate the well into the City water system or close the well, at the City's election) and properly abandon such ISDS in compliance with applicable regulations. All water wells within the Property used for domestic purposes shall comply with applicable state water quality standards. All ISDS systems constructed or used within the Property shall comply with City ISDS ordinance requirements which incorporate Gunnison County requirements, including all applicable maintenance requirements.

7.2 Phasing Plan. Attached hereto as Exhibit E is a Development Phasing Plan (the "Phasing Plan") showing Annexor's current plans for phasing development of the Property. The City acknowledges that the Phasing Plan is preliminary, is provided for illustrative purposes only, and is subject to modification by Annexor in connection with specific development applications that Annexor may file with the City. Annexor may develop sub phases within each phase at the time of submittal of subdivision plat applications. Any modifications to the Phasing Plan, other than creation of sub phases, shall be deemed to be a "major change" to the PUD Plan and shall be subject to approval by the City Planning Commission and the City Council in accordance with applicable City requirements for a major change to a PUD Plan.

7.3 No Obligation to Develop. Annexor shall have no obligation to develop all or any portion or phase of the Property and shall have no liability or obligation to the City or to any other person for its failure to develop all or any part or phase of the Property, notwithstanding the development or non development of any other phase or part of the Property. The City acknowledges that development of the Property will occur in phases over a number of years, even though all of the Property is annexed at one time. Notwithstanding the foregoing, if Annexor commences development of a phase or sub-phase of the Property, Annexor shall be obligated to construct the on-site and off-site public improvements required to support the development of such phase or sub-phase.

Section 8. Land Dedications. Certain lands shall be set aside as required by this Agreement, with the specific locations to be defined later as subdivision plats are proposed. Annexor shall not be obligated to dedicate any additional lands to the City, except for streets, utility tracts, local trail connections, and utility easements. Land areas to accommodate utility services, including electric, water, sewer, storm water and ditch water facilities, within various portions of the Property shall be dedicated as necessary at the time of platting. If Annexor plats portions of the Property in such a manner as to require the extension of utilities across unplatted portions of the Property, Annexor shall grant utility easements for all such utilities either at the time such portions of the Property are platted or after installation of the utilities, but prior to City acceptance of the utilities, whichever comes first.

8.1 Emergency Services. There shall be a two (2) acre site located in the easterly end of the area designated IM in the Zoning Map dedicated to the City for an Emergency

Services Facility to be used for Fire and other public safety purposes, not including a jail or other type of detention facility except a temporary holding cell as part of a police station. Such dedication shall occur at the time of platting of such portion of the Property; provided, however, if the City requests the dedication be made sooner, Annexor agrees to convey such property to the City by special warranty deed with a metes and bounds legal description prepared by Annexor and approved by the City.

8.2 Gunnison Watershed School District RE-1J. There shall be a ten (10) acre site provided to Gunnison Watershed School District RE-1J for use as school instructional buildings and not a transportation center or other non-academic use located in the area designated R-2M in the Zoning Map. The final location of this ten (10) acre site is shown on the PUD Plan for the R-2M zone area. The final configuration of this site will be determined at the time of plat approval for the area immediately adjacent to the site through which utility service and access to the school site will be provided, which plat shall include the school site. The Annexor and the City agree that the location of this ten (10) acre site should abut some of the dedicated park land to enable the City and the School District to develop and implement joint use plans. The ten (10) acre site will be dedicated to District RE-1J at the time of final plat approval of the area immediately adjacent to the site through which utility service and access to the school site will be provided. If the School District elects to sell the school site after dedication by Annexor to a person or entity other than the City, the School District shall first offer to sell the property to Annexor at the undeveloped value of the school site at the time of the proposed sale pursuant to a right of first refusal that shall be included in the instrument conveying or dedicating the school site to the School District. If Annexor does not exercise its right of first refusal to purchase the school site, any person or entity other than the City which acquires title to the school site shall be obligated to reimburse Annexor one-half the cost of all utilities extended to the school site and roadways providing access to the school site from U.S. Highway 50.

8.3 Gunnison Cemetery District #1. There shall be a one and one-tenth (1.10) acre addition provided to Gunnison Cemetery District #1 adjacent to the northeast portion of the existing cemetery. The 1.10-acre site will be deeded to the District by special warranty deed within ninety (90) days after the Annexation is final. The Legal description of the site shall be by metes and bounds description. Annexor will have three property

corners for this site surveyed and pinned based upon such metes and bounds description, but Annexor shall not be responsible for platting this site.

8.4 Open Space. The PUD Plan sets forth the open space requirements for the Property, which the City agrees comply with applicable City requirements. Annexor agrees to provide private and public open space in accordance with the requirements of the PUD Plan. Sixty-two (62) acres within the Property, not including the Equestrian Meadow, shall be dedicated to the City for open space, with location and exact acreage to be set forth on subdivision plats subsequently submitted to the City by Annexor.

8.5 Public Park Space. There shall be parcels of land dedicated to the City for public park development equaling approximately seventeen and four-tenths (17.4) acres. The location and general size and configuration of these dedications are shown on the PUD Plan and include areas along Trail Easements but outside the Trail Easements which will be part of the public park land dedications. The actual dedication or conveyance of the public park parcels will occur as subdivision plats and/or development applications are approved for the areas in which the park lands are to be located. If the City chooses to construct park improvements prior to the development of the portion of the Property in which the City proposes to construct such park improvements, Annexor agrees to convey by special warranty deed with metes and bounds legal description such public park land in a location and of a size mutually agreed upon by Annexor and the City, in accordance with the PUD Plan, at the time requested by the City, whether or not the area in which the public park land is to be located is being or has been platted. Actual use of the public park dedication areas shall be determined by the City in consultation with Annexor from time to time and development costs of public park facilities shall be paid by the City.

8.6 Trail Corridors. Easement alignments for non-motorized trail use are as delineated on the Parks and Trails Master Plan (Exhibit B). The trail easements ("Trail Easements") shall provide access to the public to make connections with the trails outlined in the City Trails Master Plan. A Trail Easement will be provided to the City for the Contour Trail in the North Parcel (as defined in Section 18.1 below) upon recordation of the Annexation Ordinance approving the annexation of the Property to the City. The City agrees to re-convey such Contour Trail Easement to Annexor upon Annexor's request if the annexation of the Property to the City is voided. Trail Easement improvements shall

comply with City trail standards and trail crossings of highways, roads, streets and ditches shall be constructed in accordance with the design criteria for Trail Easement crossings set forth in the PUD Plan which shall include identification of trail crossings by striping, surface changes, and similar methods. Trail crossings shall be located as depicted on the Master Roadway Plan in the PUD Plan, unless additional or different trail crossings are approved by the City. Trail Easements shall be a minimum of twenty-five (25) feet in width to allow maintenance access. The width of a Trail Easement shall be wider where the trail abuts a ditch and the ditch is included in the width of the Trail Easement so that the Trail Easement is at least twenty-five (25) feet in width excluding the width of the ditch itself. Trail Easements for those trails to be constructed, in whole or in part, at the City's expense shall be dedicated or conveyed to the City when the City and Annexor have agreed on the alignment and grade of the proposed trail. If the City chooses to construct a trail prior to the development of the portion of the Property in which the City proposes to construct a trail, Annexor agrees to grant the Trail Easement at the time requested by the City, whether or not the area in which the Trail Easement is to be located is being or has been platted, and the City shall implement and enforce trail use restrictions and install physical barriers where necessary to ensure that the then existing agricultural uses of the Property are not adversely affected. Annexor shall not be obligated to pay the costs to construct and install improvements or grading within the City Loop Trail Easement or Contour Trail Easement except as provided below in this Paragraph 8.6. Annexor shall improve all other Trail Easements, specifically including the Cemetery Ditch Trail and the Railroad Grade Trail (as such trails are shown on the Parks and Trails Master Plan attached as Exhibit B, in connection with the installation of roads and utilities after final plat approval for the portion of the Property in which the Trail Easement is located and convey the Trail Easement to the City upon completion of such trail improvements. Annexor shall have the right to install roadways and utilities across the Trail Easements for the benefit of the Property from time to time at Annexor's expense, including the costs of repairing and restoring previously installed improvements within the Trail Easements. If the City installs improvements in a Trail Easement after Annexor has completed construction of roads or utilities that cross the Trail Easement or other improvements within or adjacent to the Trail Easement, the City shall be responsible for repairing and restoring any such previously installed improvements at its expense. Grade separations between trails and roadways shall not be required except at the U.S. Highway 50 crossings which currently exist. Annexor shall be required to extend the existing grade separations when Annexor is

required to widen U.S. Highway 50. Annexor, with approval of the City, may make minor adjustments to the alignment of a Trail Easement to the extent necessary to accommodate platting or construction requirements for the area in which a Trail Easement is located, as long as such re-alignment does not result in a significant change in slopes of the trail located within the Trail Easement. All costs incurred in connection with such re-alignment and reconstruction of improvements within a Trail Easement shall be at the sole expense of Annexor. The legal description of any Trail Easement, other than the City Loop Trail, granted to the City prior to platting of such portion of the Property shall be based upon a surveyed metes and bounds description of the starting and ending points, with the trail alignment itself to be a centerline based upon global positioning satellite measurements signed by a registered land surveyor. The legal description of the City Loop Trail, if granted to the City prior to platting, shall be legally described by metes and bounds by a registered land surveyor. Annexor agrees to cooperate with the City in connection with the City's efforts to obtain financing for construction of improvements within any of the Trail Easements.

8.7 Public Transportation. Annexor shall provide one (1) "Park and Ride Facility" (comprised of shared parking lot with separate bench(s) with seating for at least twelve (12) people, bicycle rack adequate to accommodate at least ten (10) bicycles, trash receptacle and shelter for bus riders) on a shared parking basis within the CM Zone District as shown on the PUD Plan. In addition, Annexor shall provide at its expense one concrete pad eight (8) feet by twelve (12) feet between curb and sidewalk with a single bench for every three blocks on collector roadways as depicted on the Master Roadway Plan in the PUD Plan. Such facilities shall be constructed in conjunction with the construction of roads and utilities after final plat approval for each portion of the Property. Bicycle routes will be provided for in the striping of the collector roadways as depicted on the Master Roadway Plan in the PUD Plan.

8.8 Public Works. The dedication and easement required below shall occur as subdivision plats and/or development applications are approved, unless stated otherwise. Two (2) acres of land will be dedicated in the westerly portion of the area designated IM in the Zoning Map for City use and an easement of five (5) acres in size shall be granted to the City for snow storage purposes within the area designated O in the Zoning Map and shown as Equestrian Meadow on the Land Use Plan. When the City elects to use the snow storage

easement area, Annexor agrees to grant such snow storage easement and an access easement in a mutually agreed upon location connecting the snow storage easement area to a public road or highway determined by the City, based upon a metes and bounds legal description to be agreed upon by Annexor and the City, provided that the City shall be responsible for constructing a drive into the snow storage easement area with an all-weather surface, as well as the access connection between the public road or highway and the easement.

8.9 Housing. The City and the Annexor agree that the Property shall be subject to any Affordable Housing Ordinance that is adopted by the City and applied on a uniform basis throughout the City on the same basis as all other properties within the City boundaries.

Section 9. Services. The City agrees to provide the Property with all services currently provided by the City on a municipal-wide basis and under terms and conditions that are no less favorable than the terms and conditions on which such services are provided to other property within the City, except as stated below.

9.1 Utility Installation. The Annexor and/or Districts shall install all utilities in accordance with the City of Gunnison Municipal Code and Construction Standards as amended from time to time. Annexor and/or Districts agree to install the number of street lights specified by the City, and of a type determined by the City.

9.2 REA Requirements. The Annexor requests and agrees to being included in the City of Gunnison Electric Service Territory. The City agrees to include the Property in the City of Gunnison Electric Service Territory. The Annexor and the City agree to comply with the provisions of Part Two of Article 9.5, Title 40, Colorado Revised Statutes, as amended (the "REA Statute"), that are applicable to the City take over of the service area of Gunnison County Electric Association ("GCEA"). All costs that the City is required to pay to GCEA pursuant to the REA Statute shall be paid or reimbursed to the City through a surcharge or variable rate to be paid by utility customers within the Property only.

9.3 Acceptance of Service. Annexor further agrees to accept the current service level being provided by the City on a City-wide basis as a sufficient and satisfactory provision of municipal services.

9.4 Continuity of Electric Utility Service. Since the residence owned by Donna R. Bratton and certain water wells located within the Property (collectively referred to as the "Bratton Residence") is being provided electric utility service by GCEA on the date of this Agreement, the City agrees to enter into agreements with GCEA as may be required to ensure that the Bratton Residence and such wells continue to receive electric utility service after annexation until such time as the City electric utility system is extended to and can provide electric utility service to the Bratton Residence and such wells.

Section 10. Improvements. Except for those improvements specifically provided for in this agreement, all subdivision improvement requirements, including, but not limited to streets and roads, curbs and gutters, sidewalks, street lighting, and utilities within subdivisions shall be imposed as and when the subdivision occurs and such requirements shall only be those reasonably required by the subdivision. The City's Municipal Code, Subdivision Chapter shall control the construction, warranting, guarantee of completion, and dedication of all improvement requirements.

Section 11. Utilities. All infrastructure improvements needed to adequately serve all potential uses projected for total build-out shall be installed by the Annexor or District to the Property and within the Property on a phased basis as portions of the Property are developed. Annexor shall not be required to install utility infrastructure improvements that are not reasonably necessary to serve the developed portions of the Property. The City shall review and approve all utility plans and shall inspect and accept for service and continued maintenance, upon passage of inspection, the work performed by the Annexor. The following provisions shall apply to each phase of development of the Property:

11.1 Highway Crossings. Annexor shall be responsible for all permitting required for installing utilities under and across CDOT property.

11.2 Off-Site Utility Extensions. The Annexor agrees to design and construct all off-Property water lines, sewer lines, electric lines, storm water facilities, debris flow

retention structures, and irrigation ditches to the perimeter of the Property. Improvements will be made in accordance with the PUD Plan and at such time as may be necessary to serve each phase of development of the Property to the satisfaction of the City. Exhibit F attached hereto and incorporated herein identifies conceptual utility line locations both within the Property and off-site, including connections to existing utilities. Specific utility locations and capacities shall be developed for specific phases of development in accordance with the procedures and requirements of the PUD Plan and may deviate from Exhibit F upon approval of specific utility plans from the City Council without the necessity of amending this Agreement. Annexor shall submit such detailed engineering plans and studies as are required by the PUD Plan for off-Property water lines, sewer lines, electric lines, storm water facilities, debris flow retention structures, and irrigation ditches required to serve a phase of development of the Property in accordance with the procedures set forth in the PUD Plan.

11.3 Utility Easements. Annexor agrees to dedicate all necessary unobstructed rights-of-way within the Property and to use commercially reasonable efforts to obtain all necessary unobstructed rights-of-way off the Property for utility easements needed for water and sewer lines and storm water facilities to serve the Property, or for transmission through the Property, not less than twenty feet (20') in width for a sanitary sewer, water line, electric line, or irrigation ditch, and not less than thirty feet (30') in width when a parallel water and sewer line must be installed. Easements for storm water facilities and debris flow retention structures shall be based upon engineering of such facilities. The Annexor shall grant additional temporary construction easements for installation of water and sewer mains and other utilities where required by the City. Such temporary construction easements shall include requirements for restoration of the property subject to such temporary easements upon completion of construction. The City agrees that required utility easements located off the Property shall be located in public rights-of-way to the maximum extent possible. The City further agrees that a District may use its power of eminent domain to acquire necessary utility easements and rights-of-way for ingress and egress to and from the Property when such easements or rights-of-way must be located outside existing public rights-of-way and Annexor is unable to acquire such rights-of-way for its fair market value without the use of the power of eminent domain.

11.4 Electric Distribution System. All electric system equipment including, but not limited to substation, transformers, conduits, conductors, and other related appurtenances shall be designed and constructed by, and at the expense of, the Annexor and shall be properly sized to serve all electric loads for full build-out on the Property, except that electric system equipment need be installed only to the extent necessary to serve each phase of development of the Property. Annexor agrees to provide a study of the improvements to the City's electric system required to provide electric service to each phase of development of the Property in accordance with the procedures set forth in the PUD Plan, with such study to be based on the Plan of Electric Service Expansion to Gunnison Rising Planned Unit Development for the Town of Gunnison, Colorado, dated November, 2008, prepared by ESC Engineering. Such study shall identify improvements to electric system generation and distribution capacity required to serve such phase, including improvements that may need to be oversized to accommodate future phases as well as the current phase of development in order to realize economies of scale or minimum required system improvements. Such study, when approved by the City, shall govern the electric system improvements to be installed by Annexor for such phase of development. The City and the Annexor hereby agree that the Annexor may establish a surcharge or differential rate on electric charges within the Property to recover Annexor's costs for upgrading the City's electric system outside the Property, which surcharge or differential rate shall be collected by the City through its electric service billings, with all amounts collected to be paid over to the Annexor within ten (10) days after the end of each month. The City shall have no obligation to pay surcharges or differential rates for customers within the Property that fail to pay their surcharge or differential rate. The City agrees to cause the City's electric utility to take such actions as may be necessary to implement such surcharge or differential rate upon request of Annexor after Annexor has paid for improvements to the City's electric system outside the Property.

11.5 Domestic Potable Water System. All water system equipment including, but not limited to wells, storage, mainlines, and other appurtenances shall be designed and constructed by the Annexor and shall be properly sized to serve all water capacity demands for full build-out on the Property, except that water system equipment need be installed only to the extent necessary to serve each phase of development of the Property. Annexor shall submit such detailed engineering plans and studies as are required by the PUD Plan

for water system facilities required to serve a phase of development of the Property in accordance with the procedures set forth in the PUD Plan.

11.6 Sewage Collection System. All sewer system equipment including, but not limited to mainlines, manholes, lift stations and other appurtenances shall be designed and constructed by the Annexor and shall be properly sized to serve all sewer capacity demands for full build-out on the Property, except that sewer equipment need be installed only to the extent necessary to serve each phase of development of the Property. Annexor shall submit such detailed engineering plans and studies as are required by the PUD Plan for sewer system facilities required to serve a phase of development of the Property in accordance with the procedures set forth in the PUD Plan.

11.7 Raw Water Irrigation System. All irrigation system equipment including, but not limited to mainlines, culverts, control structures, and other appurtenances shall be designed and constructed by the Annexor and shall be properly sized to serve all irrigation capacity demands for full build-out on the Property that may be served with a gravity flow system, except that irrigation system equipment need be installed only to the extent necessary to serve each phase of development of the Property. Annexor shall submit such detailed engineering plans and studies as are required by the PUD Plan for irrigation system facilities required to serve a phase of development of the Property in accordance with the procedures set forth in the PUD Plan.

11.8 Storm Water Control System. Annexor will provide a Storm Water Management Master Plan for all of the Property. The Storm Water Management Master Plan shall be deemed to be a Major Change to the PUD Plan and shall be reviewed and approved by the City in accordance with applicable City procedures and requirements. No subdivision or development application shall be accepted by the City until final approval of the Storm Water Management Plan Major Change, except for the following: (i) public trail improvements; (ii) improvements associated with snow storage operations; and (iii) the Sketch Plan Subdivision application in the Government District to accommodate the proposed Colorado Division of Wildlife facility. Upon approval, the Storm Water Management Master Plan shall be deemed to be incorporated in the PUD Plan. All storm water system equipment including, but not limited to mainlines, sumps, detention basins, control release structures, and other appurtenances shall be designed and constructed by

the Annexor and shall be properly sized to serve all storm water capacity demands for full build-out on the Property, except that storm water system equipment need be installed only to the extent necessary to serve each phase of development of the Property. Annexor shall submit such detailed engineering plans and studies as are required by the PUD Plan for storm water system facilities required to serve a phase of development of the Property in accordance with the procedures set forth in the PUD Plan. The City will maintain all public facilities located within public street rights of way. The individual property owner or property owners association will maintain all private facilities, including detention and water quality facilities which shall be outlined in the Storm Water Management Master Plan.

11.9 Small Utilities. All other utility installation shall be coordinated with the appropriate utility provider including, but not limited to natural gas, telephone, and cable companies.

11.10 Refuse Collection. All development is required to meet City requirements for collection of refuse from all residential, commercial, and industrial units through either municipal or private refuse collection services.

11.11 Construction by District. The City agrees that the foregoing requirements may be satisfied by a special district or districts organized for some or all of the Property in lieu of performance by Annexor.

Section 12. Landscaping. Landscaping and maintenance of the areas adjacent to the rights-of-ways associated with the Property and zone district boundary buffers within the Property shall be in accordance with the zoning and covenants applicable to the subdivisions within the Property. Landscaping, maintenance, and irrigation will be the responsibility of the individual property owners, a Master or individual homeowners association for the subdivisions, or the Districts. Landscape maintenance requirements and responsibilities for a phase of development of the Property shall be set forth in restrictive covenants adopted prior to subdivision plat approval for such phase. Landscaping within the Property, including, but not limited to the buffers required under the PUD Plan, shall be installed in accordance with the requirements of the PUD Plan.

Section 13. Metropolitan Districts. Districts may be formed by Annexor to design, construct, and finance improvements in accordance with state law and any applicable City of Gunnison Ordinance to the extent consistent with this Section 13.

13.1 Formation. A Service Plan for all Districts shall be provided to the City Council for review and consideration of approval.

13.2 Disclosure of Mill Levy. Annexor shall prepare and provide to buyers of property within the Property a mill levy disclosure statement, the form of which is first approved by the City prior to being placed in all purchase agreements, disclosing the maximum allowed District mill levy and acknowledged as a separate document by all buyers at the closing of any property within the District's boundaries.

Section 14. Environmental Resource Protection. To ensure the Property improvements are completed with minimum impacts on environmental resources, Annexor shall comply with the following requirements in addition to provisions of the PUD Plan and applicable municipal, state and federal laws and regulations:

14.1 Wetlands. The Annexor will comply with the City's requirements as to Wetland setbacks as set forth in the PUD Plan.

14.2 Flood Plain. The Annexor will comply with City ordinances implementing the Federal Emergency Management Authority (FEMA) regulations for delineation of floodplains and further will not develop any residential, industrial, commercial, or recreational vehicle park structures other than bridges and other permitted crossings within delineated special flood hazard areas, as such special flood hazard areas may be modified from time to time in accordance with FEMA requirements.

14.3 Sage Grouse Habitat Protection. It is intended that sage grouse habitat be protected and/or minimum impact is experienced by the Gunnison sage grouse species. To achieve this goal the Annexor shall relinquish its existing grazing permits from the United States Bureau of Land Management ("BLM") and the United States Forest Service ("USFS") as described in Table 1 to the report provided to the City entitled "The Mitigation Recommendation Gunnison Valley Partners-Gunnison Rising Project Wildlife/Gunnison

Sage Grouse." Annexor also shall encumber 160 acres of land located in the North Parcel with a conservation easement approved by the Colorado Division of Wildlife.

14.4 Storm Water Management. National Pollutant Discharge Elimination System (NPDES) program Phase II regulation requirements established under the federal Clean Water Act and applicable City ordinances will be the standard for all Property storm water system improvements.

Section 15. Water Rights and Supply Quality. The Annexor agrees to satisfy the City's interest in preserving the water quality and quantity for the basin by taking certain actions concerning water supply in accordance with the following provisions: .

15.1 Water Rights. All water rights ("Water Rights") that are associated with the Property as listed on Exhibit D attached hereto, including those existing rights listed in Exhibit D which are involved in the pending Case No. 06CW123, District Court, Water Division No. 4 (but not any of Annexor's other water rights that are not listed on Exhibit D), together with such new Water Rights which may be decreed in said case for use on the Property (including water rights for the Peaceful Ponds), shall be deeded to the City by the Annexor upon approval of this Agreement. Those Water Rights will be reviewed prior to acceptance of this Agreement by the City water attorney. Annexor will not commence physical development of the Property until the decree has been entered in Case No. 06CW123. Any consumptive use credits which may be determined in the future by the Annexor and the City not to be necessary for development or use on the Property may be utilized on other property in the Gunnison River drainage in Gunnison County, but not elsewhere, first for the benefit of the residents of the City of Gunnison, and second for the benefit of the residents of the County of Gunnison, as the City of Gunnison may determine at that time._Upon transfer of the Water Rights and entry of the final decree in Case No. 06CW123, the City will deliver water as needed, as part of the City's municipal water system, for the developed use of the Property. Annexor may continue to beneficially use that portion of the Water Rights which is not subject to dry up, or other restriction, in connection with development and use of the Property as part of the City's municipal water. Such use of Water Rights shall be limited to the Property only and the City will not impose any fees or charges for such use. Annexor shall be responsible for maintenance of irrigation ditches and water wells used by Annexor until incorporation of any such ditches

or wells into the City's municipal water system. Annexor agrees to continue to fully utilize and beneficially use all senior irrigation rights on the Property in order to ensure that such Water Rights shall not be abandoned. In this regard, senior irrigation rights that are going to be discontinued to produce consumptive use credits shall continue to be used until developed and all other senior irrigation rights shall continue to be used even after full development. Prior to conveyance of the Water Rights to the City, Annexor shall provide the City with a water rights title opinion from Annexor's water attorney addressed to the City and an opinion from the Annexor's water engineer addressed to the City that the Water Rights described on Exhibit D correctly states the number of historic c.f.s. associated with each ditch with respect to the Property. Any future obligations to pay Aspinall Unit augmentation charges associated with the Water Rights conveyed to the City shall be paid by Annexor or a District or reimbursed to the City by Annexor or a District. The Annexor and the City shall cooperate with each other in connection with responding to any petitions for reconsideration of the adjudication of the Water Rights which are involved in the pending Case No. 06CW123, District Court, Water Division No. 4, which may be filed pursuant to the Water Court's retained jurisdiction. All costs incurred by the City in connection with any such petitions shall be reimbursed by the Annexor or a District, provided that Annexor may elect to provide the legal and engineering services required in connection with such responses in lieu of reimbursing the City for such expenses. If the Property is de-annexed from the City for any reason or the annexation of the Property is reversed or nullified pursuant to a referendum election or legal action, the City shall re-convey the Water Rights to Annexor upon request by Annexor.

15.2 Water Supply Quality. The Annexor shall ensure that the water supply quality is compatible with the existing quality of the City's water supply by installing all water treatment processes required to achieve a satisfactory water quality characteristic for the potable water system based on the City water quality analysis and recommendations. At the time of plat submittal and prior to development of any wells on or adjacent to the Property, Annexor shall submit water quality reports as specified by the City evidencing that the water supply meets the City's requirements, both as to the continuing costs of treatment and whether, as treated, the water is of sufficient quality not to degrade the quality of the City's water system overall as determined by the City. If the water quality of the wells on or adjacent to the Property is not approved by the City, then Annexor may, in lieu of developing wells on or adjacent to the Property for the potable

water system and with approval of the City, elect to expand the City's existing water well field or drill wells in other locations where the water quality is adequate if necessary to meet the water quality standards. Installation of new wells or expansion of the City's existing water well field shall be completed and provisionally accepted by the City with sufficient capacity to serve the phase of development submitted for plat approval prior to issuance of building permits for any structures to be served by such facilities. Annexor shall be responsible for obtaining water court approval of any changes to the Augmentation Plan and pay all costs and expenses that may be required as a result of Annexor obtaining potable water sources outside the Property. No subdivision or development application shall be accepted by the City until City approval of the water supply quality, except for the Sketch Plan Subdivision application in the Government District to accommodate the proposed Colorado Division of Wildlife facility.

Section 16. Transportation and Traffic.

16.1 Street Dedications. Annexor shall dedicate free and clear of all liens and encumbrances of any kind, all rights-of-way for public streets and related improvements (such as sidewalks, landscaping, drainage improvements, bus stops and curb and gutter) within the Property for the full width thereof, as may be reasonably required by the City. Annexor shall design and fully improve all public streets within the Property in accordance with the procedures set forth in the PUD Plan when reasonably necessary to serve the traffic generated by development of the Property, without cost to the City. Such dedication of streets shall occur at the time of City approval of each subdivision plat within the Property; however, Annexor agrees to dedicate such rights-of-way at an earlier time as Annexor and the City may mutually agree upon. An earlier dedication shall not relieve Annexor of its obligation to improve streets as provided herein. The City agrees to accept Annexor's dedication of rights-of-way within the Property in accordance with this Section 16.1. The City agrees to accept all dedicated rights-of-way for maintenance after completion of construction of all improvements thereon in accordance with City requirements and the expiration of the warranty period required by the City. The development and use of private roads, streets and alleys within the Property must comply with City Land Development Code private road standards. Any private streets, roads or alleys constructed within the Property shall be maintained by a District or an Association. The City's Municipal Code and Construction Standards shall control the construction,

warranting, guarantee of completion, and dedication of all public street and related improvement requirements.

16.2 Reserved Easement. Annexor agrees to reserve a sixty (60) foot easement (the "Reserved Easement") within the portion of the Property north of U.S. Highway 50, including the North Parcel (as defined in Section 18.1 below), as shown on the PUD Plan for future construction of a road by the City. The Reserved Easement shall extend to the north or west boundary of the North Parcel generally in the location shown on the PUD Plan. Annexor shall dedicate such Reserved Easement to the City upon request by the City after the City has obtained adequate funding to construct the planned roadway. The exact alignment of the roadway will be determined by the City prior to dedication of the Reserved Easement to the City. Prior to such time, Annexor may construct private or public roads within some or all of the Reserved Easement area in connection with development of the Property and such roads shall be incorporated into the road that is constructed within the Reserved Easement by the City.

16.3 Street Maintenance. The City agrees to maintain, repair, replace, clean, and remove snow from all dedicated public streets within the Property which have been accepted for maintenance by the City in a manner that is no less frequent than the level of service provided generally within the City boundaries.

16.4 Off-Site Improvements. Infrastructure improvements needed to serve the Property that are outside the Property boundaries shall be paid for by the Annexor or a District and shall be constructed in accordance with the following provisions:

16.4.1 Improvement Policy. The general policy of the City is that development pays its own way and that the owners of undeveloped property benefited by the installation of utilities and other public improvements shall contribute financially to the cost of such improvements upon the development of their properties. This policy is designed to achieve fairness in the division of costs of installation of utilities and other public improvements and to protect the taxpayers of the City.

16.4.2 Reimbursement Policy. Reimbursement agreements, where agreed to by the initial developer and the City, are an equitable and efficient means of promoting

private installation of improvements. The Annexor and the City may enter into such agreements as outlined in the Utility Reimbursement Policy of the City of Gunnison Municipal Code.

16.4.3 Off-Site Street Improvements. At the time of development of each phase of the Property, Annexor shall post security for the cost of signalization and street design and construction outside the Property, as outlined in the 2006 LSC Transportation Analysis and any updated traffic studies applicable to off-site street improvements approved by the City, for such phase prior to commencement of physical development of such phase. Forms of security may include letters of credit, bonds, construction loan commitment, and cash collateral. The specific security requirements will be set forth in a Subdivision Improvement Agreement for such phase of development. Off-Site street improvements required to serve a phase of development of the Property shall be completed prior to Annexor proceeding with physical development of any other phase of development of the Property, unless construction of an off-site street improvement does not meet the required warrants as reasonably determined by the City in accordance with the Manual on Uniform Traffic Control Devices ("MUTCD"). Actual funding of any off-site street improvement that does not meet traffic warrants will be provided when needs generated by the development of the Property meet the required warrants as reasonably determined by the City, but the security for any such deferred off-site street improvement shall be maintained by Annexor until construction meets required warrants.

16.4.4 Infrastructure Extensions. Easements must be reserved in subdivision plats for the Property for the purpose of future extension of utility and street improvements to developments beyond the Property.

16.5 State Highway Access. Prior to submitting any development applications for the Property, after annexation of the Property to the City, Annexor agrees to develop a highway corridor access control plan for the Property abutting U.S. Highway 50 in cooperation with the City's engineering department and to obtain approval of such plan from the Colorado Department of Transportation ("CDOT"). Annexor shall pay all costs associated with the preparation and processing of such highway corridor access control plan in regards to the portion of the approved highway corridor access control plan pertaining to the Property, except for any additional property the City may elect to include

in the highway corridor access control plan. State Highway improvements shall be constructed in accordance with the following provisions:

16.5.1 Highway Access Improvements. Annexor agrees to construct improvements to U.S. Highway 50 where the highway is adjacent to the Property in accordance with the requirements of the approved highway corridor access control plan as may be reasonably and customarily required by CDOT to accommodate the existing traffic on U.S. Highway 50 and that which is projected to be generated by development of the Property. The timing of construction of such improvements shall be based upon the traffic generated by development of the Property at each phase of development. If CDOT requires the construction of improvements that go beyond what is required to accommodate the traffic projected to be generated by development of the Property, Annexor and the City shall enter into a reimbursement agreement whereby Annexor will be reimbursed for such costs in excess of its proportional share of such costs by other property owners whose developments are served by such excess construction as a result of annexations into the City.

16.5.2 Timing of Highway Improvements. Such improvements shall be constructed after subdivision approval for the portion of the Property which generates the need for the improvements. CDOT requirements for the construction of improvements must be adhered to by Annexor.

16.6 Street Improvements. The Annexor and the City acknowledge and agree that the payment for and the standards for construction of private and public streets and timing for construction of private and public streets within and adjacent to the Property shall be accomplished in accordance with City standards that are applicable throughout the City.

16.7 PUD Plan. The PUD Plan includes a plan for the major street arterials and collectors within and adjacent to the Property. The PUD Plan also sets forth dimensional standards for streets with cross-sections showing all right-of-way surface improvements and intersection controls, as well as, connectivity to and within each zone of the Property. Surface improvements include, but are not limited to, sidewalks, paths, greenways, buffers, bus stops, street lighting, and areas for storm drainage, drain swales, and ditches. Upon

approval by City Council, the PUD Plan shall be deemed to be an amendment to the City Transportation Master Plan.

16.8 Connections with Western State College. All street, path, and sidewalk connections to and adjacent to Western State College ("Western") from the Property are included in the PUD Plan. The Annexor and the City shall enter into and perform their respective obligations under the Memorandum of Agreement by and between the City, the Annexor, Western State College and the Western State College Foundation, generally in the form attached hereto as Exhibit G and incorporated herein by this reference (the "WSC MOA"). The terms and provisions of the WSC MOA shall be deemed to be an integral part of this Agreement. The City and the Annexor agree to design and construct improvements and/or modifications on Georgia Avenue consistent with the provisions and obligations of the WSC MOA which shall be incorporated in the Georgia Avenue Street Master Plan (as defined in the WSC MOA). The design will be from Main Street at the west end to the Annexable Property east of the Aspinall-Wilson Center. The City and the Annexor further agree to allocate the responsibilities of the "Gunnison Parties" (as defined in the WSC MOA) in a manner consistent with the provisions and obligations of the WSC MOA as follows:

16.8.1 The Annexor and the City staff shall prepare a Georgia Avenue Street Master Plan from Main Street to a connection within the Annexable Property that provides a complete street plan approach, including traffic calming, pedestrian accessibility and multimodal treatments consistent with the terms of the WSC MOA (referred to herein as the "Georgia Avenue Street Master Plan"). The Georgia Avenue Street Master Plan shall be processed as a revision to the City's Master Plan. The portion of the Georgia Avenue Street Master Plan from Colorado Avenue to the eastern boundary of the Western State College land (referred to herein as the "WSC Land") shall be consistent with the architecture of the improvements on the WSC Land in the vicinity of Georgia Avenue.

16.8.2 The improvements shown on the Georgia Avenue Street Master Plan from Main Street to Colorado Street will be the City's responsibility. The City will make these improvements at its discretion, as and when funds are budgeted and appropriated for such purpose by City Council.

16.8.3 The Annexor and the City agree to construct improvements and/or modifications on Georgia Avenue to provide greater opportunity for multimodal travel (i.e., pedestrian and bicycle) (which improvements may include speed controls, traffic calming, pedestrian/bike path, and crosswalk control, and are referred to herein as the "Multimodal Improvements"), as and when funds for the Multimodal Improvements are budgeted and appropriated by the City Council, except as provided below. All costs of design and construction of Multimodal Improvements west of Adams Street (not including the Adams Street intersection) and east of Colorado Street shall be borne by the City and the Annexor on a 50/50 basis, as and when City funds are budgeted and appropriated by the City Council, except as provided below. The City's share of the costs of design and construction of the Multimodal Improvements between Loveland and Adams streets (not including the Adams Street intersection) shall be paid out of the portion of the RETA payments designated the "Escrowed Assessments" in the RETA Declaration. Such Escrowed Assessments shall be escrowed with an escrow agent mutually acceptable to the City Manager and the Annexor and used to pay the City share of the costs of the design and construction of the Multimodal Improvements between Loveland and Adams streets (not including the Adams Street intersection) pursuant to escrow instructions approved by the City Manager and the Annexor. Such escrow instructions shall provide that the Annexor may initiate the design and construction of the Multimodal Improvements between Loveland and Adams streets in connection with the Georgia Avenue Extension and Reconstruction (as such term is defined in the WSC MOA). If the Escrowed Assessments are insufficient to pay the City's share of the Multimodal Improvements described above and Annexor has elected to initiate design and construction of the Multimodal Improvements, the Annexor shall pay the City's share of such costs and the Escrowed Assessments shall be used to reimburse the City's share of such costs to the Annexor without interest.

16.8.4 The Annexor agrees to construct Multimodal Improvements as shown on the Georgia Avenue Street Master Plan in connection with the Georgia Avenue Extension east of Adams Street as part of the planned improvements for the Property. All costs of construction of these

improvements east of and including the Adams Street intersection shall be borne by the Annexor.

16.8.5 The Annexor agrees to construct a pedestrian plaza at the north end of Escalante Drive between the north entrance to the WSC library parking lot and the entrance to the Mountaineer Bowl (referred to herein as the "Pedestrian Plaza"). All costs of design and construction of the Pedestrian Plaza shall be borne by the Annexor.

16.8.6 The City agrees to construct and install streetscape treatments and enhancements at the Adams Street entry into the College from U.S. Highway 50 north to Georgia Avenue in order to enhance pedestrian and bicyclist safety and to improve non-motorized and pedestrian traffic (referred to herein as the "Adams Entrance Improvements"), as and when funds for the Adams Entrance Improvements are budgeted and appropriated by the City Council. All costs of design and construction of the Adams Entrance Improvements shall be paid out of the Escrowed Assessments as provided in the RETA Declaration. Such Escrowed Assessments shall be escrowed with an escrow agent mutually acceptable to the City Manager and the Annexor and used to pay the costs of the design and construction of the Adams Entrance Improvements pursuant to escrow instructions approved by the City Manager and the Annexor. Such escrow instructions shall provide that the Annexor may initiate the design and construction of the Adams Entrance Improvements in connection with the Georgia Avenue Extension and Reconstruction (as such term is defined in the WSC MOA). If the Escrowed Assessments are insufficient to pay the costs of the Adams Entrance Improvements and Annexor has elected to initiate design and construction of the Adams Entrance Improvements, the Annexor shall pay such costs and the Escrowed Assessments shall be used to reimburse such costs to the Annexor without interest.

16.8.7 The Annexor will construct traffic calming measures in order to minimize access through the campus and a campus entrance on WSC Land to the east of the Aspinall-Wilson Center (referred to herein as the "Eastern Entrance") in conjunction with the construction of the Georgia Avenue Extension and will replace the existing asphalt surface in order to accommodate the increased traffic and continued need for parking in this area. The Eastern

Entrance shall be aesthetically consistent with the architecture of the campus, thereby making it clear that traffic is entering the Western State College grounds. All costs of design and construction of the extension of Georgia Avenue east from Adams Street to a new road within the Property (referred to herein as the "Georgia Avenue Extension") and the Eastern Entrance shall be borne by the Annexor.

16.8.8 The Annexor shall relocate the parking lot for the Aspinall-Wilson Center to the east side of the Center (referred to herein as the "Parking Lot Relocation") in conjunction with construction of the Georgia Avenue Extension and the Eastern Entrance. All costs of design and construction of the Parking Lot Relocation shall be borne by the Annexor.

16.8.9 The cost of any temporary emergency access improvements within the right of way for the Georgia Avenue Extension as provided for in Section 13 of the WSC MOA shall be borne by the Annexor.

16.8.10 Responsibility for obtaining approvals from the President of Western State College and the Western State College Foundation pursuant to the WSC MOA shall be determined from time to time by the City Manager and the Annexor based upon the particular improvements being submitted for approval.

16.8.11 The cost of the Buffer required to be constructed on the Property as provided for in Section 4 of the WSC MOA shall be borne by the Annexor.

Section 17. Economic Agreements. The Annexor and the City agree that there are long-term benefits in annexing the Property. There is also agreement that potential fiscal impacts may occur as well. To mitigate those concerns, certain economic strategies are agreed to in an effort to create added value to the City and Annexor.

17.1 Real Estate Transfer Assessment. The Annexor shall establish a Real Estate Transfer Assessment through covenants that are imposed on the property by the Annexor and approved by the City in the form attached hereto as Exhibit H (the "RETA Declaration"). The RETA Declaration may be amended by Annexor, as Declarant, only with the consent of the City, shall be perpetual, and shall not be subject to the provisions of the Colorado Common Interest Ownership Act, 38-33.3-101, et seq., Colorado Revised Statutes. If the Property is ever disconnected from the City, the RETA Declaration may be

amended or revoked by Declarant without the necessity of first obtaining the consent of the City or any other person. The RETA Declaration shall provide that each time a fee interest in the Property or any portion thereof is sold, transferred or conveyed there shall be an assessment paid to the City in an amount equal to 1.5% of the gross sales price. Funds from this fee will be placed in a Reserve Account that may be used for maintenance and operations, capital projects and other municipal purposes as determined by the City. The RETA Declaration shall be recorded upon Final Approval.

Section 18. Off-Site Lands.

18.1 North Parcel. Annexor owns approximately 414 acres of land abutting the northerly boundary of the Property that is legally described in Exhibit I attached hereto and incorporated herein by this reference (referred to herein as the "North Parcel"). The North Parcel is not being annexed to the City, but the Annexor and the City have reached certain agreements regarding the future use of the North Parcel that are an integral part of the consideration for the agreement of the City and the Annexor to annex the Property to the City. The provisions of this Section 18.1 shall be deemed to be a covenant binding and running with the North Parcel that is binding on the present and all future owners of the North Parcel. In consideration of the City's agreement to annex the Property to the City, Annexor hereby agrees that the Annexor will convey the Contour Trail Easement located thereon to the City as described in Section 8.6 of this Agreement and the Reserved Easement as described in Section 16.2 of this Agreement, notwithstanding the fact that the North Parcel is not located within the City boundaries and is not otherwise subject to the jurisdiction of the City Council. The City Council may specifically enforce the provisions of this Section 18.1 through an action for injunctive relief brought in the District Court for the7th Judicial District, State of Colorado.

18.2 Avigation Easement. Within thirty (30) days after the ordinance approving Annexation of the Property is final and non-appealable, Annexor shall execute and deliver to the Board of County Commissioners of Gunnison County ("BOCC") an Avigation Easement in the form attached hereto as Exhibit J. A copy of the fully executed Avigation Easement shall be provided to the City prior to commencement of any development of the Property. Notwithstanding the foregoing, delivery of the Avigation Easement to the BOCC shall be held in abeyance if the annexation of the Property is subject to referendum or judicial proceedings until the annexation of the Property is final and not subject to further challenges.

Section 19. Cooperative Drafting. This Agreement is the product of the cooperative effort of the City and the Annexor and shall not be construed or interpreted against either party solely on the basis that that party drafted the Agreement.

Section 20. Recording. Following Final Approval, this Agreement shall be recorded in the records of Gunnison County, Colorado and shall run with the land, and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns, subject to the provisions of Section 6.3 above.

Section 21. Protective Covenants. All of the Property located within the subdivisions will be subject to the Master Protective Covenants as recorded in the records of Gunnison County, Colorado. The Master Protective Covenants for the Property shall be included in the PUD Plan and shall be subject to approval by the City. Development applications for the Property shall comply with all applicable zoning procedures and requirements of the City as well as the Master Protective Covenants. The Master Protective Covenants may provide for the recordation of supplemental declarations that apply to various portions of the Property and that would be recorded at the time of development of such portions of the Property.

Section 22. Default and Remedy Provisions.

22.1 Default by the City. A "breach" or "default" by the City under this Agreement shall be defined as (a) any zoning, land use, or other action or inaction, direct, indirect, or pursuant to an initiated measure, taken without the Annexor's consent, that

alters, impairs, prevents, diminishes, imposes a moratorium on development, delays, or otherwise materially and adversely affects any development, use or other rights of the Annexor under this Agreement or the PUD Plan; or (b) the City's failure to fulfill or perform any material obligation of the City contained in this Agreement. Except as otherwise provided in this Agreement or the PUD Plan, the City shall not be in default under this Agreement for the application on a uniform and non-discriminatory basis of City regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical, and mechanical codes), as all of such regulations exist on the date of this Agreement or may be enacted or amended after the date of this Agreement, provided that such newly enacted or amended regulations shall not have a material adverse effect on any of Annexor's Vested Property Rights.

22.2 Default by the Annexor. A "breach" or "default" by the Annexor shall be defined as the Annexor's failure to fulfill or perform any material obligation of the Annexor contained in the Agreement.

22.3 Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified in Section 26, and the defaulting party shall have thirty (30) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such thirty (30) day period and the defaulting party gives written notice to the non-defaulting party within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of the thirty (30) day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

22.4 Remedies.

22.4.1 If any default under this Agreement is not cured as described above, the non-defaulting party shall have the right to enforce the defaulting party's obligation hereunder by an action for any equitable remedy, including injunction and/or specific performance, and/or an action to recover damages. Each remedy provided for in the

Agreement is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law, in equity or by statute.

22.4.2 In the event of default by Annexor which is not cured as described above, in addition to any other remedy described herein, the City may withhold any further approvals of subdivisions and/or development applications.

Section 23. Vested Rights.

23.1 Zoning. Upon Annexation of the Property, the entire Property shall be zoned PUD in accordance with the approved PUD Plan, as amended from time to time by Annexor with City approval in accordance with the procedures of the City's Municipal Code. The approved PUD Plan, as amended from time to time, shall be deemed to be an amendment to the City Master Plan.

23.2 Permitted Uses/Design Standards. The permitted uses of the Property, the density and intensity of use, the maximum height, bulk, and size of proposed buildings, project design standards, provisions for reservation or dedication of land for public purposes, the general location of roads and trails, the ability of the Annexor to relocate roads, trails and improvements, and other terms and conditions of development applicable to the Property shall be those set forth in this Agreement and the PUD Plan, as amended from time-to-time. The City hereby agrees that the density caps set forth in the PUD Plan may be increased by an amendment to the PUD Plan approved by the City in accordance with the applicable procedures of the City's Municipal Code.

23.3 Vesting of Property Rights. The Annexor and the City agree that (a) this Agreement and the PUD Plan constitute an approved "site-specific development plan" as defined in the Vested Property Rights Statute, and (b) that the owners of the Property shall have vested property rights to undertake and complete development and use of the Property as provided in this Agreement and PUD Plan. Pursuant to the Vested Property Rights Statute, the approval of this plan constitutes a vested property right pursuant to Article 68 of Title 24, COLORADO REVISED STATUTES, as amended.

23.4 Property Rights Vested. The rights identified below shall constitute the vested property rights under this Agreement.

23.4.1 The right to develop, plan, and engage in land uses within the Property in the manner and to the extent set forth in and pursuant to this Agreement and the PUD Plan.

23.4.2 The right to develop, plan, and engage in land uses within the Property in accordance with the densities, physical development standards and other physical parameters set forth in the PUD Plan.

23.4.3 The right to develop the Property in the order, at the rate and at the time market conditions dictate, subject to the terms and conditions of this Agreement and the PUD Plan.

23.4.4 The right to develop and complete the development of the Property (including, without limitation, the right to receive all the City approvals necessary for the development of the Property) with conditions, standards, provisions, requirements, and dedications which are set forth within this Agreement and the PUD Plan.

23.4.5 The City hereby acknowledges and agrees that Section 24-68-105(1), Colorado Revised Statutes, provides that a vested property right precludes "any zoning or land use action by a local government or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property" with certain exceptions as set forth therein. Therefore, the City will not initiate any zoning, land use or other legal or administrative action or take any actions pursuant to an initiated measure that would violate such provision of state law as it relates to the Vested Property Rights for the Property as set forth in this Agreement.

23.5 Term of Vested Property Rights. The City acknowledges and agrees that the PUD Plan and this Agreement constitute a Site Specific Development Plan for purposes of the vesting of property rights as described in 24-68-101, et seq., Colorado Revised Statutes, and the rights of Annexor and its successors and assigns pursuant to and set forth in the

PUD Plan and this Agreement shall be vested property rights pursuant to such statute. Without limiting the generality of the foregoing, the vested property rights shall include the land uses, densities, lot sizes, street types, public and private improvement construction and payment obligations, phasing of development of the Property, and development rights as set forth in the approved PUD Plan and this Agreement (the "Vested Property Rights"). The Vested Property Rights shall be vested for a period ending on December 31, 2029 (the "Vesting Period"). In the event there is a referendum or judicial challenge to the annexation, the Vesting Period shall commence on the date of an election pursuant to a referendum when the annexation is affirmed or the date any judicial decision upholding the annexation is non-appealable, whichever is later. The City acknowledges that circumstances relating to development of the Property, including the size and phasing of the development, economic cycles, and market conditions, warrant the Vesting Period described herein.

23.6 Compliance with General Regulations. Except as otherwise provided in this Agreement or the PUD Plan, the establishment of Vested Property Rights under this Agreement shall not preclude the application on a uniform and non-discriminatory basis of City regulations of general applicability (including, but not limited to, building, fire, plumbing, electrical, and mechanical codes), as all of such regulations exist on the date of this Agreement or may be enacted or amended after the date of this Agreement, provided that such newly enacted or amended regulations shall not have a material adverse effect on any of Annexor's Vested Property Rights. The Annexor does not waive its right to oppose the enactment or amendment of any such regulations.

23.7 City Publication of Vested Property Rights Notice. The City agrees to publish notice of the City's approval of the ordinances approving this Agreement and the PUD Plan within fourteen (14) days after such approval is or approvals are granted in compliance with the requirements of Section 24-68-103(1)(c) , Colorado Revised Statutes.

Section 24. Representations. The City represents and warrants that upon adoption and ratification of this Agreement it shall have authority and be lawfully entitled to perform each and every one of its obligations under the Agreement. The Annexor represent that they are individuals or Colorado limited liability companies in good standing, duly organized under the laws of Colorado and legally entitled to do business in Colorado. The managers of the limited liability

companies whose signatures appear below have the requisite authority to execute this Agreement on behalf of such limited liability companies.

Section 25. Severability. If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement shall continue in full force and effect as if the offending term, condition, or provision were never part of this Agreement; except that if in the sole judgment of the Annexor the invalid and unenforceable term, condition, or provision is a material part of this Agreement, the Annexor may seek and obtain disconnection.

Section 26. Future Acts. Following the execution of this Agreement, the City and the Annexor agree to do all acts, including the execution of appropriate documents, when requested by the other, where such acts are reasonably required to fulfill the performing party's obligation under this Agreement. The City agrees that, in the event Annexor (or any individual party who is an Annexor) elects to annex additional property to the City, the City will accept reports and studies that were submitted in connection with this Annexation Agreement and the Annexation Petition to the extent such reports and studies remain valid and relate to such property subsequently proposed for annexation. Nothing contained herein, however, shall obligate the City to annex any such additional property if such annexation does not comply with applicable City requirements in effect at the time of such proposed annexation.

Section 27. Notice. Any notice required or permitted under this Agreement will be deemed to be received when delivered personally in writing or seven (7) days after notice has been deposited with the U.S. Postal Service, postage prepaid, certified and return receipt requested, and addressed as follows:

If to the Annexor: Gunnison Valley Partners, LLC
2 North Cascade Avenue, Suite 1280
Colorado Springs, Colorado 90903

AND

Gunnison Gateway, LLC
c/o Rufus Wilderson
525 N. Main Street
Gunnison, Colorado 81230

AND

Donna R. Bratton
P.O. Box 856
Gunnison, Colorado 81230

If to the City: City of Gunnison
201 W. Virginia Avenue
Gunnison, Colorado 81230

Section 28. Applicable Law. The Agreement is executed in Gunnison County, Colorado, and shall be interpreted, construed, and governed by the laws of the State of Colorado without, however, giving effect to Colorado choice of law principles.

Section 29. Jurisdiction and Venue. Jurisdiction and venue of any action as to this Agreement and the interpretation, enforcement, or the determination of the rights and duties of the parties hereto shall be the District Court of Gunnison County, Colorado. Each party submits to the personal jurisdiction of the District Court of Gunnison County, Colorado and waives any and all rights under the laws of any other State or County to object to the jurisdiction of the District Court of Gunnison County, Colorado as to any action pertaining to this Agreement.

Section 30. Attorneys' Fees. If any legal action is commenced or maintained in Court, whether in law or in equity, by any party to this Agreement as to the interpretation, enforcement, construction, or the determination of the rights and duties of the parties to the Agreement or any document provided herein, the prevailing party in any such action shall be entitled to reasonable attorneys' fees, together with all reasonable costs and expenses incurred in such action.

Section 31. Cooperation in Defending Legal Challenges. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of any provision of this Agreement or the Annexation, the Annexor and the City agree to cooperate in defending such action or proceeding and to bear their own expenses in connection therewith. Unless the City and Annexor otherwise agree, each party shall select and pay its own legal counsel to represent it in connection with any such action or proceeding.

Section 32. Waiver. No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

Section 33. City Findings. The City hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety, and general welfare and the provisions of this Agreement are consistent with the PUD Plan and development laws, regulations, and policies of the City.

Section 34. Assignment and Assumption. The Annexor shall have the right to assign or transfer all or any portion of its interests, rights, or obligations under this Agreement to third parties acquiring an interest or estate in the Property, including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or of any improvement now or hereafter located within the Property, provided that to the extent the Annexor assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of the Annexor's obligations under this Agreement by its assignees or transferee shall thereby relieve the Annexor of any further obligations under this Agreement with respect to the matter so assumed.

Section 35. Binding Agreement. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, legal representatives and heirs.

Section 36. Force Majeur. Time is of the essence in the performance of the parties obligations hereunder. However, neither party shall be liable for any delay or failure to perform its obligations under this Agreement caused by events beyond the reasonable control of, and without the fault or negligence of such party, including, without limitation: (i) changes in state, county, or federal law, or administrative procedures; (ii) changes in state water laws and water rights administrative practices; (iii) Acts of God; (iv) sudden action of the element such as floods, earthquakes, hurricanes, or tornadoes; (v) sabotage; (vi) vandalism; (vii) terrorism; (viii) war; (ix) riots; (x) fire; (xi) explosion; (xii) severe cold or hot weather; (xiii) snow; (xiv) drought; (xv) other extreme weather conditions; (xvi) blockades; (xvii) insurrection; (xviii) strike, slowdown or other labor disputes (even if such difficulties could be resolved by conceding to the demands of a labor group); (xix) actions by state, county, federal, municipal, or other governmental agencies other

than the City; (xx) inability, despite due diligence, to obtain required licenses, permits, or approvals; and (xxi) changes of law related to financial obligations, revenues, and budgetary matters concerning Colorado local governments or special districts that prohibit or delay performance under this Agreement.

Section 37. Subordination of Deeds of Trust. Annexor shall provide the City evidence satisfactory to the City Attorney that all deeds of trust and mortgages encumbering any portion of the Property are subordinated and subject to this Agreement.

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

CITY:

CITY OF GUNNISON, a Colorado home rule municipality

By: City of Gunnison
Its: Mayor

By: Stu Ferguson
Its: Mayor Stu Ferguson

ATTEST:
By: Gail A. Davidson
City Clerk Gail Davidson

Address: 201 W. Virginia Avenue
Gunnison, Colorado 81230
Facsimile: (970) 641-8051
Email: gail@cityofgunnison-co.gov

APPROVED AS TO FORM:

CITY OF GUNNISON ATTORNEY

By: Roderick E. Landwehr
Roderick E. Landwehr

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Annexation Agreement was acknowledged before me on this 5th day of February, 2010, by Stu Ferguson, as Mayor of the City of Gunnison, Colorado, a home rule municipality, and attested to by Gail Davidson, City Clerk.

WITNESS my hand and official seal.

My commission expires: My Commission Expires 11/24/2013

Melissa M. McLeod
Notary Public

NOTARY PUBLIC
MELISSA M. MCLEOD
STATE OF COLORADO

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

ANNEXOR:

GUNNISON VALLEY PARTNERS, LLC, a Colorado limited liability company

By: SCHUCK GUNNISON LLLP, a Colorado limited liability limited partnership
Its: Managing Member

By: Schuck Colorado, Ltd., a Colorado corporation, General Partner

By: _____
Its: President
Address: 2 North Cascade Avenue, Suite 1280
Colorado Springs, Colorado 90903
Facsimile: (719) 633-6258
Email: wds@theschuckcorporation.com

LEIGH BLACKBURN NOTARY PUBLIC STATE OF COLORADO My Commission Expires 03-17-2010

STATE OF COLORADO)
) ss.
COUNTY OF ~~GUNNISON~~ EL PASO)

The foregoing Annexation Agreement was acknowledged before me on this 26th day of January, 2010, by William D. Schuck, as President of Schuck Colorado, Ltd., a Colorado corporation, General Partner of Schuck Gunnison LLLP, a Colorado limited liability limited partnership, Managing Member of **GUNNISON VALLEY PARTNERS, LLC,** a Colorado limited liability company, Annexor.

WITNESS my hand and official seal.
My commission expires: March 17, 2010

Leigh Blackburn
Notary Public – Leigh Blackburn

GUNNISON GATEWAY, LLC, a Colorado limited liability company

By: Rufus Wilderson
Its: Special Manager

Address: c/o Rufus Wilderson
525 N. Main Street
Gunnison, Colorado 81230
Facsimile: 970-641-1943
Email: rwilderson@brattanhill.com

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Annexation Agreement was acknowledged before me on this 27th day of January, 2010, by Rufus Wilderson, as Special Manager of **GUNNISON GATEWAY, LLC,** a Colorado limited liability company, Annexor.

WITNESS my hand and official seal.

My commission expires: 8/20/13

Tiffany O'Connell
Notary Public

NOTARY PUBLIC
TIFFANY O'CONNELL
STATE OF COLORADO
My Commission Expires 08/20/2013

Donna R Bratton

DONNA R. BRATTON

Address: P.O. Box 856
Gunnison, Colorado 81230
Facsimile: 970-641-1943
Email: none

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Annexation Agreement was acknowledged before me on this 26th day of January, 2010, by **DONNA R. BRATTON,** Annexor.

WITNESS my hand and official seal.

My commission expires: 8/20/13

Tiffany O'Connell
Notary Public

NOTARY PUBLIC
TIFFANY O'CONNELL
STATE OF COLORADO
My Commission Expires 08/20/2013

EXHIBIT A

THE PROPERTY

A tract of land situated in Section 1, Township 49 North, Range 1 West, Section 36, Township 50 North, Range 1 West, Sections 5 & 6, Township 49 North and Sections 30 & 31, Township 50 North, Range 1 East, New Mexico Principal Meridian, Gunnison County, State of Colorado, more particularly described as follows:

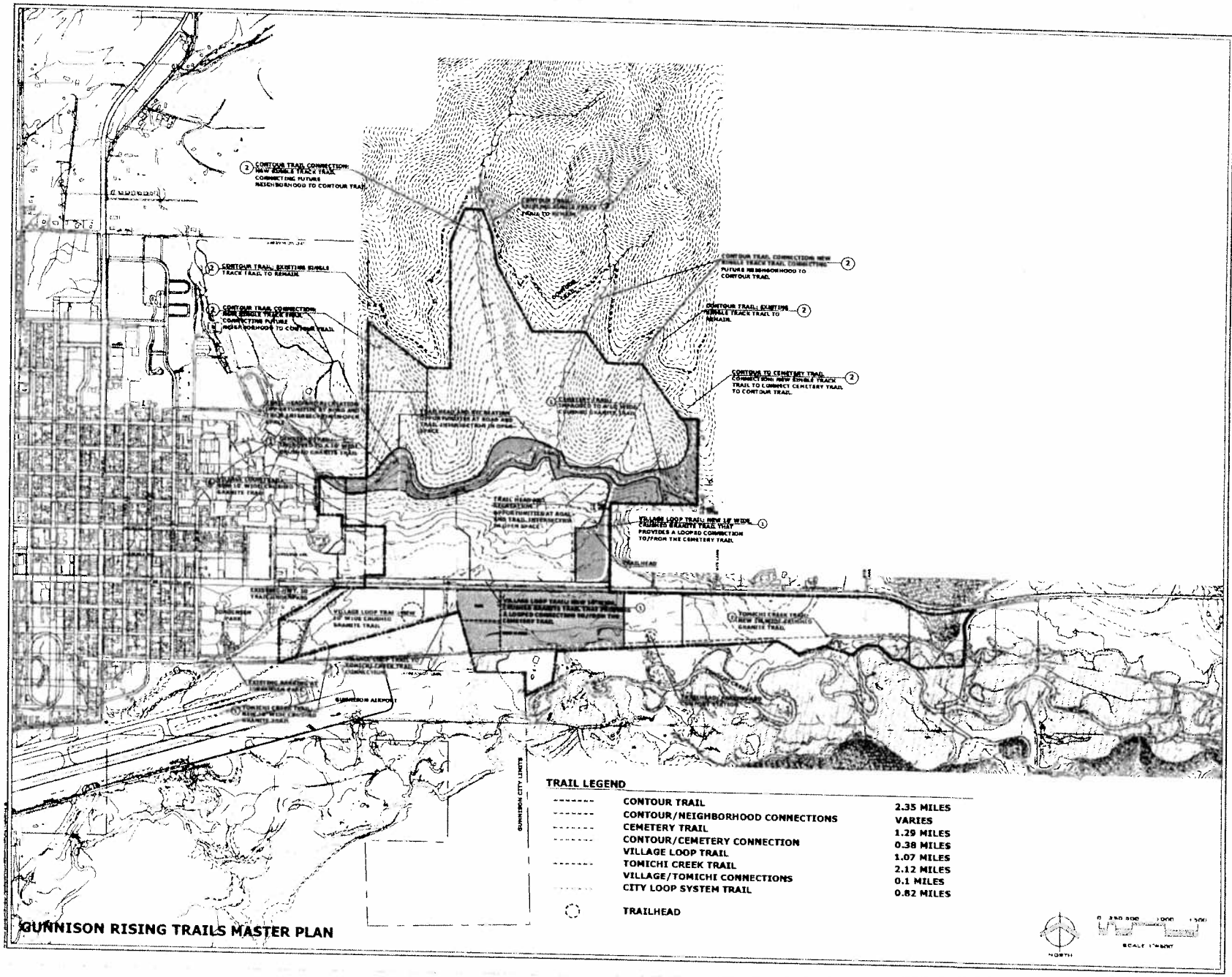
Beginning at the E¼ corner of said Section 31; Thence S 00°23'38" W 1324.57 Ft. to the Southeast corner of the NE¼SE¼ of said Section 31; Thence S 89°43'41" W 1339.66 Ft. to the Southwest corner of the NE¼SE¼ of said Section 31; Thence S 00°06'24" W 1364.37 Ft. to the South Right-of-Way of U.S. Highway 50; Thence N 89°47'13" E 1335.75 Ft. along said South Right-of-Way; Thence N 89°46'08"E 2629.52 Ft. along said South Right-of-Way to a curve; Thence 568.43 Ft. along the arc of a curve to the right along said South Right-of-Way having a radius of 1382.50 Ft., a central angle of 23°33'29" and a chord of S 80°51'50" E 564.44 Ft. to a reverse curve; Thence 897.91 Ft. along the arc of a curve to the left along said South Right-of-Way having a radius of 1005.00 Ft., a central angle of 51°11'25" and a chord of S 83°46'55" E 868.34 Ft. to a compound curve; Thence 278.27 Ft. along the arc of a curve to the left along said South Right-of-Way having a radius of 1980.00 Ft. a central angle of 08°03'09" and a chord of N 83°10'10" E 278.04 Ft.; Thence S 67°42'16" W 53.30 Ft.; Thence S 40°54'57" W 145.71 Ft.; Thence S 23°32'39" W 126.67 Ft.; Thence S 04°53'25" E 223.24 Ft.; Thence S 03°24'52" W 398.71 Ft.; Thence S 85°33'42" W 700.92 Ft.; Thence N 66°21'06" W 93.44 Ft.; Thence N 58°06'04" W 191.98 Ft.; Thence S 68°05'02" W 44.26 Ft.; Thence N 85°52'10" W 94.86 Ft.; Thence N 48°17'08" W 297.80 Ft.; Thence S 89°20'32" W 198.37 Ft.; Thence S 57°04'57" W 163.61 Ft.; Thence S 31°48'25" W 68.93 Ft.; Thence N 74°42'38" W 467.51 Ft.; Thence S 73°08'43" W 414.66 Ft.; Thence N 60°44'16" W 376.57 Ft.; Thence S 85°00'41" W 740.78 Ft.; Thence S 86°55'49" W 1238.95 Ft.; Thence S 86°09'44" W 1447.72 Ft.; Thence S 07°27'36" W 470.05 Ft.; Thence S 61°10'21" W 472.51 Ft.; Thence N 01°10'36" W 365.64 Ft.; Thence S 89°09'54" W 766.41 Ft. along the North line of the SE¼NW¼ of said Section 6 to a Point on the East boundary of the Gunnison County Airport Property Conveyed to Gunnison County by court order, recorded May 29, 2002 at reception number 520716; Thence N 16°24'30" W 946.95 Ft. along said Airport Boundary; Thence S 73°35'30" W 2887.24 Ft. along said Airport Boundary to the West line of Government Lot 1 of said Section 1; Thence N 00°08'15" W 637.48 Ft. along the West line of

Government Lot 1 of said Section 1 to the Southerly line of the Pioneer Society Addition to the City of Gunnison; Thence N 59°40'00" E 992.74 Ft. along said Addition to the South Right-of-Way of U.S. Highway 50; Thence N 89°45'50" E 31.74 Ft. along said South Right-of-Way; Thence N 00°14'10" W 10.00 Ft. along said South Right-of-Way; Thence N 89°45'50" E 422.59 Ft. along said South Right-of-Way; Thence N 00°19'28" E 199.26 Ft. to the South line of the Wilson Subdivision; Thence N 89°44'13" E 298.29 Ft. to the Southeast corner of said Subdivision; Thence N 00°24'42" E 749.87 Ft. to the Northeast corner of said Subdivision; Thence S 90°00'00" W 665.54 Ft. to the Northwest corner of said Subdivision; Thence N 00°20'16" E 160.44 Ft. to the North line of the Western State College tract of land described in Book 592 Page 374, Gunnison County Records; Thence S 89°59'20" W 354.96 Ft. to the Northwest corner of said tract of land; Thence N 00°20'16" E 573.73 Ft. to the Northwest corner of the E½S½S½NE¼SE¼ of said Section 36; Thence N 89°59'34" E 723.64 Ft. to the East line of said Section 36; Thence N 00°25'34" E 998.76 Ft. to the East ¼ corner of said Section 36; Thence N 00°16'22 W 1408.93 Ft. to a point on the West line of Section 31; Thence S 53°25'47" E 1135.40 Ft.; Thence S 89°58'56" E 366.73 Ft.; Thence N 00°33'12" W 1911.81 Ft. to the Southwest corner of the SE1/4SW1/4 of Section 31; Thence N 22°23'07" E 572.25 Ft.; Thence S 88°48'33" E 267.61 Ft.; Thence S 21°46'27" E 386.90 Ft.; Thence S10°59'31" E 483.90 Ft.; Thence S 29°21'37" E 1146.79 Ft. to the Northeast corner of the SE1/4NW1/4 of Section 31; Thence N 89°39'15" E 820.64 Ft.; Thence S 35°58'54" E 582.64 Ft.; N 89°39'15" E 536.57 Ft.; Thence S 35°50'18" E 1042.33 Ft.; Thence N 89°41'54"E 272.84 Ft. to the Point of Beginning containing 633.024 Acres, more or less.

Basis of bearings is the North line of said Section 6 being S 89°46'00' W according to the U.S.G.L.O. Plat of Township 49 North, Range 1 East, N.M.P.M.

EXHIBIT B

PARKS AND TRAILS MASTER PLAN



NES

DMG

PARKS AND TRAILS MASTER PLAN

GUNNISON RISING
Authentically Colorado

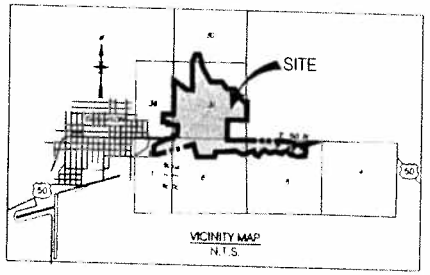
EXHIBIT B
ANNEXATION AGREEMENT

S Dominguez Gunnison County, CO 597048
02/24/2010 12:23 PM Pg: 54 of 116
027 R: $581.00 D: $0.00

EXHIBIT C

PUD ZONING PLAN MAP

Gunnison Rising PUD Zoning Plan Map



OVERALL PUD ZONING DESCRIPTION

A tract of land situated in Section 1, Township 49 North, Range 1 West, Section 36, Township 50 North, Range 1 West, Sections 5 & 8, Township 49 North and Sections 30 & 31, Township 50 North, Range 1 East, New Mexico Principal Meridian, Gunnison County, State of Colorado, more particularly described as follows:

Beginning at the E1/4 corner of said Section 31; Thence S 00°23'08" W 132.67 Ft. to the Southeast corner of the NE1/SE1/4 of said Section 31; Thence S 89°43'41" W 1336.88 Ft. to the Southwest corner of the NE1/SE1/4 of said Section 31;
Thence S 00°08'04" W 1364.37 Ft. to the South Right-of-Way of U.S. Highway 50;
Thence N 89°47'13" E 1336.75 Ft. along said South Right-of-Way;
Thence N 89°48'08" E 2629.52 Ft. along said South Right-of-Way to a curve;
Thence 568.43 Ft. along the arc of a curve to the right along said South Right-of-Way having a radius of 1382.50 Ft., a central angle of 23°33'39" and a chord of S 80°51'50" E 564.44 Ft. to a reverse curve;
Thence 897.91 Ft. along the arc of a curve to the left along said South Right-of-Way having a radius of 1005.00 Ft., a central angle of 51°13'25" and a chord of S 63°48'55" E 868.34 Ft. to a compound curve;
Thence 278.27 Ft. along the arc of a curve to the left along said South Right-of-Way having a radius of 1980.00 Ft., a central angle of 08°03'09" and a chord of N 83°10'13" E 278.01 Ft.;
Thence S 87°42'18" W 53.30 Ft.;
Thence S 10°54'57" W 116.71 Ft.;
Thence S 23°32'59" W 126.87 Ft.;
Thence S 0°15'29" E 223.21 Ft.;
Thence S 03°24'52" W 388.71 Ft.;
Thence S 85°33'42" W 739.82 Ft.;
Thence N 68°21'06" W 93.44 Ft.;
Thence N 58°08'04" W 191.98 Ft.;
Thence S 08°05'02" W 44.26 Ft.;
Thence N 85°32'10" W 91.86 Ft.;
Thence N 18°11'08" W 297.40 Ft.;
Thence S 89°20'32" W [illegible] Ft.;
Thence S 57°04'57" W [illegible] Ft.;
Thence S 31°48'25" W 66[illegible] Ft.;
Thence N 77°42'38" W 45[illegible] Ft.;
Thence S 73°08'43" W 414.86 Ft.;
Thence N 60°44'18" W 376.57 Ft.;
Thence S 85°00'41" W 740.78 Ft.;
Thence S 86°55'49" W 1238.95 Ft.;
Thence S 86°09'44" W 1417.72 Ft.;
Thence S 07°27'36" W 470.05 Ft.;
Thence S 81°10'21" W 472.51 Ft.;
Thence N 01°10'36" W 131.32 Ft.;
Thence S 89°48'10" W 704.62 Ft. to a Point on the East boundary of the Gunnison County Airport Property Conveyed to Gunnison County by court order, recorded May 29, 2000 as reception number 520716;
Thence N 16°04'50" W 1182.08 Ft. along said Airport Boundary;
Thence S 73°19'30" W 2687.24 Ft. along said Airport Boundary to the West line of Government Lot 1 of said Section 1;
Thence N 00°08'15" W 637.48 Ft. along the West line of Government Lot 1 of said Section 1 to the Southerly line of the Pioneer Society Addition to the City of Gunnison;
Thence N 59°40'00" E 982.71 Ft. along said Addition to the South Right-of-Way of U.S. Highway 50;
Thence N 89°49'50" E 31.74 Ft. along said South Right-of-Way;
Thence N 00°11'10" W 10.00 Ft. along said South Right-of-Way;
Thence N 89°49'50" E 422.59 Ft. along said South Right-of-Way;
Thence N 00°19'28" E 199.20 Ft. to the South line of the Wilson Subdivision;
Thence N 89°44'13" E 288.29 Ft. to the Southeast corner of said Subdivision;
Thence N 00°24'42" E 749.87 Ft. to the Northeast corner of said Subdivision;
Thence S 89°30'00" W 865.54 Ft. to the Northwest corner of said Subdivision;
Thence N 00°20'16" E 180.44 Ft. to the North line of the Western State College tract of land described in Book 592 Page 374, Gunnison County Records;
Thence S 89°55'00" W 354.96 Ft. to the Northwest corner of said tract of land;
Thence N 00°20'16" E 573.73 Ft. to the Northwest corner of the E1/2S1/2NE1/2SE1/4 of said Section 36;
Thence N 89°59'34" E 723.64 Ft. to the East line of said Section 36;
Thence N 00°25'34" E 998.76 Ft. to the East 1/4 corner of said Section 36;
Thence N 00°18'22" W 1408.93 Ft. to a point on the West line of Section 31;
Thence S 53°28'47" E 133.40 Ft.;
Thence S 89°58'58" E 386.75 Ft.;
Thence N 00°33'12" W 1911.81 Ft. to the Southwest corner of the SE1/4SW1/4 of Section 30;
Thence N 22°23'07" E 572.25 Ft.;
Thence S 88°48'32" E 267.61 Ft.;
Thence S 21°48'27" E 398.90 Ft.;
Thence S 10°58'01" E 481.90 Ft.;
Thence S 29°21'37" E 1146.78 Ft. to the Northeast corner of the SE1/4NW1/4 of Section 31;
Thence N 89°39'15" E 820.81 Ft.;
Thence S 35°58'54" E 582.64 Ft.; N 89°39'15" E 538.57 Ft.;
Thence S 35°50'18" E 1012.33 Ft.;
Thence N 89°41'54" E 272.84 Ft. to the Point of Beginning containing 638.91 Acres, more or less.

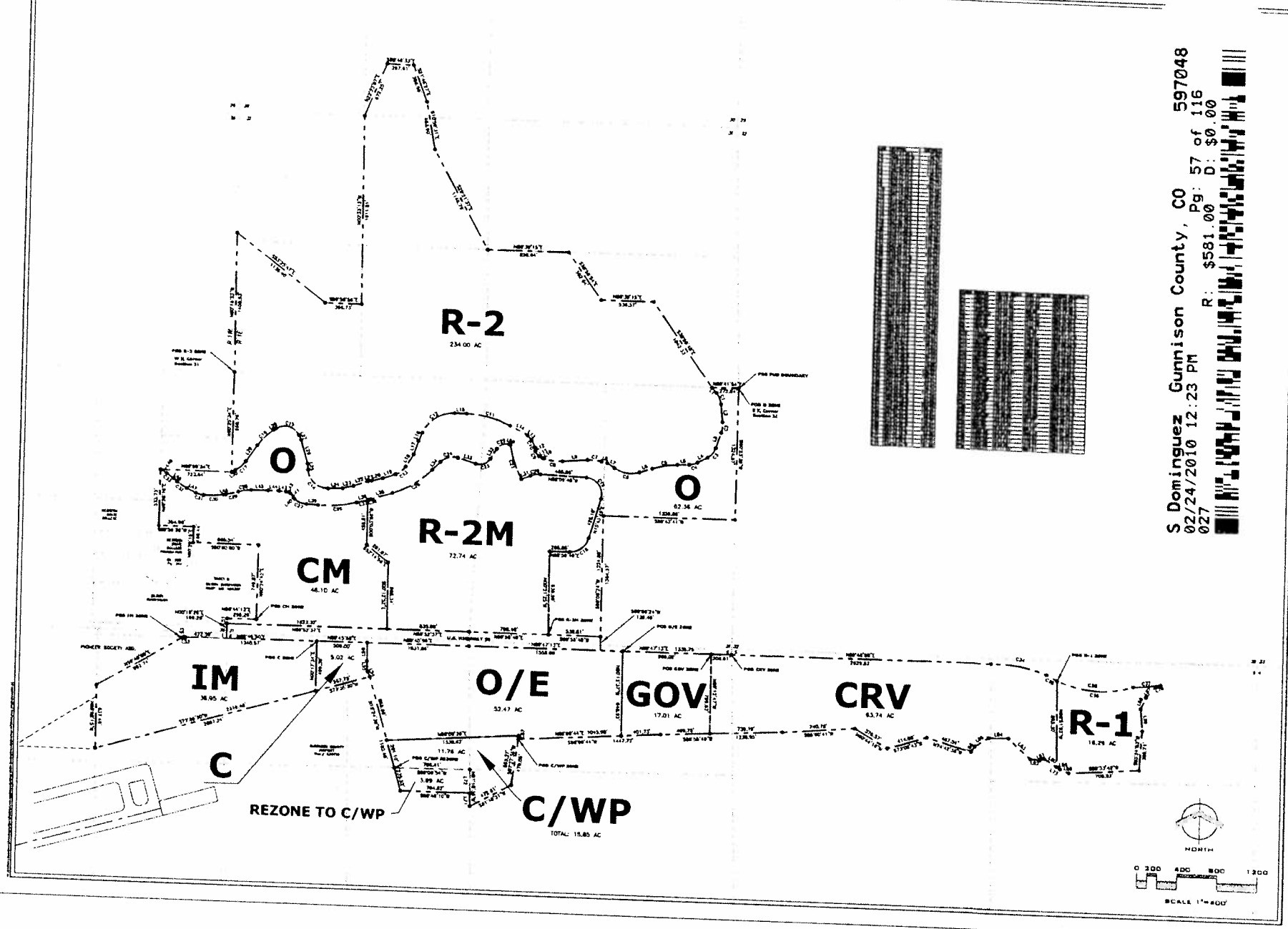
Basis of bearings is the North line of said Section 6 being S 89°46'00" W according to the U.S.G.L.O. Plat of Township 49 North, Range 1 East, N.M.P.M.

S Dominguez Gunnison County, CO 597048
02/24/2010 12:23 PM Pg: 56 of 116
027 R: $581.00 D: $0.00

Sheet Index

Sheet 1 of 6	Title Sheet
Sheet 2 of 6	Zoning Exhibit
Sheet 3 of 6	Legal Descriptions
Sheet 4 of 6	Proposed Zoning
Sheet 5 of 6	Utilities
Sheet 6 of 6	Site Contours and Features

URBA DESIGN, LAND PLANNING & LANDSCAPE ARCHITECTURE
NES
DMC ENGINEERING CONSULTANTS, INC.
PUD ZONING PLAN MAP
GUNNISON RISING
Authentically Colorado
EXHIBIT C PROPOSED ZONING
SHEET No. 1 OF [illegible]



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02/24/2010 12:23 PM Pg: 57 of 116
027 R: $581.00 D: $0.00

URBAN DESIGN LAND PLANNING & LANDSCAPE ARCHITECTURE
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PUD ZONING PLAN MAP

GUNNISON RISING
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EXHIBIT C
ZONING

2

S Dominguez Gunnison County, CO 597048
02/24/2010 12:23 PM Pg: 58 of 116
027 R: $581.00 D: $0.00

R-1 ZONING DESCRIPTION

[illegible]

R-2 ZONING DESCRIPTION

[illegible]

R-2M ZONING DESCRIPTION

[illegible]

O ZONING DESCRIPTION

[illegible]

OE ZONING DESCRIPTION

[illegible]

IM ZONING DESCRIPTION

[illegible]

GOV ZONING DESCRIPTION

[illegible]

CWP ZONING DESCRIPTION

[illegible]

CWP REZONE ZONING DESCRIPTION

[illegible]

CRV ZONING DESCRIPTION

[illegible]

CM ZONING DESCRIPTION

[illegible]

C ZONING DESCRIPTION

[illegible]

URBAN DESIGN
LAND PLANNING
CIVIL ENGINEERING
ARCHITECTURE
NES

DMC

PUD ZONING
PLAN MAP

GUNNISON RISING
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EXHIBIT C
LEGAL DESCRIPTIONS

3

Notes:

1. Information on the provision of utilities is shown on Sheet 2 of 3 and contained in Chapter 18, Development Phasing, as well as on the Utilities map
2. Development standards are addressed for each zoning district in the relevant chapter of the Gunnison Rising PUD Development Standards, and a reference to standards of the GMC is contained in Chapter 2 of the PUD code.

ROAD CLASSIFICATIONS

PROPOSED MAJOR COLLECTOR

PROPOSED MINOR COLLECTOR

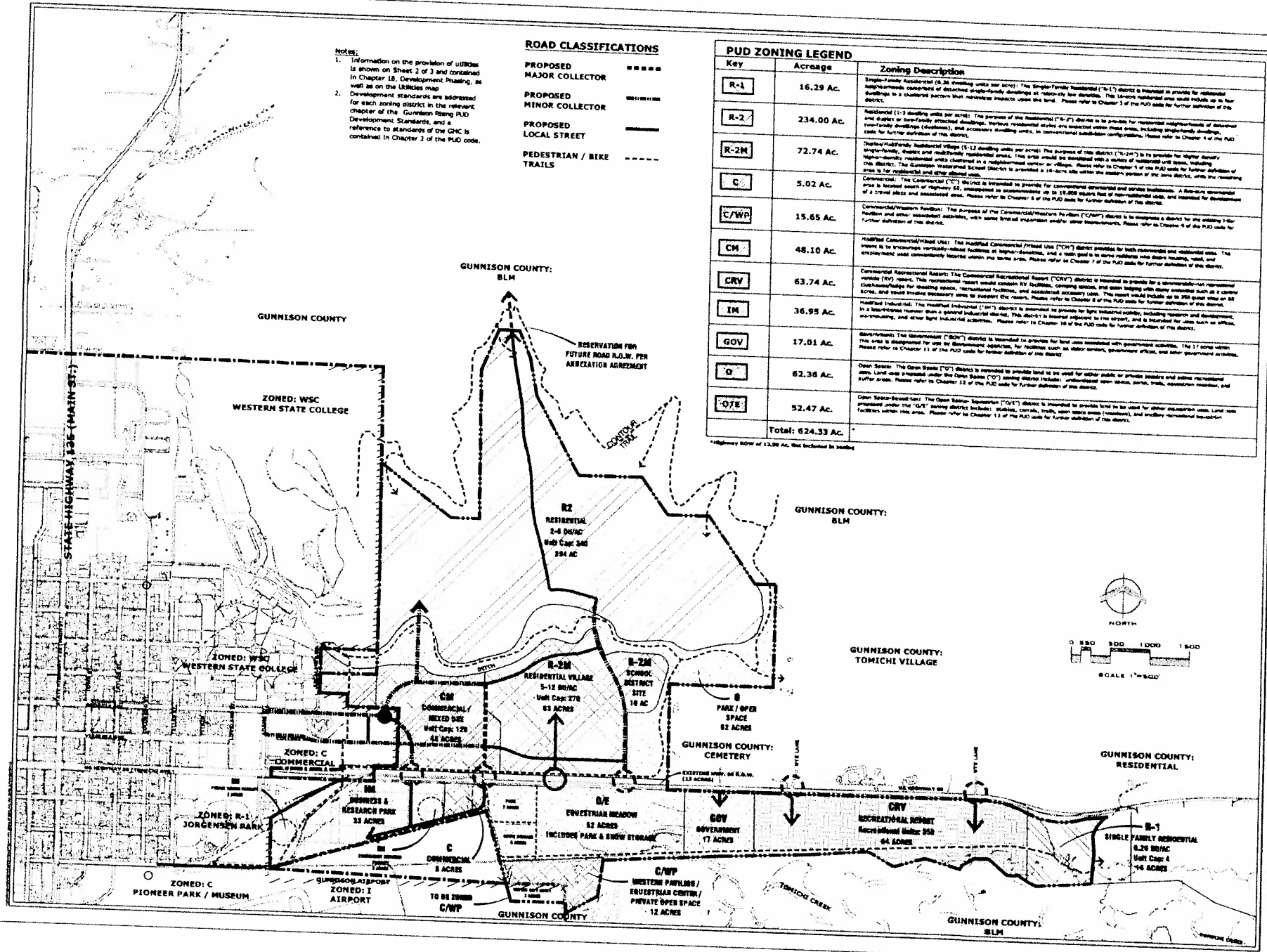
PROPOSED LOCAL STREET

PEDESTRIAN / BIKE TRAILS

PUD ZONING LEGEND

Key	Acreage	Zoning Description
R-1	16.29 Ac.	Single-Family Residential (6.26 dwelling units per acre): The Single-Family Residential ("R-1") district is intended to provide for residential neighborhoods consisted of detached single-family dwellings at relatively low densities. This Lo-pro residential area could include up to four dwellings in a clustered pattern that minimizes impacts upon the land. Please refer to Chapter 3 of the PUD code for further definition of this district.
R-2	234.00 Ac.	Residential (1-3 dwelling units per acre): The purpose of the Residential ("R-2") district is to provide for residential neighborhoods of detached and duplex or two-family attached dwellings. Various residential styles are expected under these areas, including single-family dwellings, two-family dwellings (duplexes), and accessory dwelling units. In conventional subdivision configurations, Please refer to Chapter 4 of the PUD code for further definition of this district.
R-2M	72.74 Ac.	Display/Multifamily Residential Village (5-12 dwelling units per acre): The purpose of this district ("R-2M") is to provide for higher density single-family, duplex and multifamily residential areas. This area would be developed with a variety of residential unit types, including higher-density residential units clustered in a neighborhood center or village. Please refer to Chapter 4 of the PUD code for further definition of this district. The Gunnison Watershed School District is provided a 10-acre site within the eastern portion of the zone district, while the remaining area is for residential and other allowed uses.
C	5.02 Ac.	Commercial: The Commercial ("C") district is intended to provide for commercial-oriented and service businesses. A Rest-stop commercial area is located south of Highway 50, encompassed by approximately up to 10,000 square feet of non-residential uses, and intended for development of a travel plaza and associated area. Please refer to Chapter 6 of the PUD code for further definition of this district.
C/WP	15.65 Ac.	Commercial/Western Pavilion: The purpose of the Commercial/Western Pavilion ("C/WP") district is to designate a district for the existing I-70/Pavilion and other associated activities, with some limited expansion and/or other improvements. Please refer to Chapter 6 of the PUD code for further definition of this district.
CM	48.10 Ac.	Modified Commercial/Mixed Use: The Modified Commercial /Mixed Use ("CM") district provides for both commercial and residential uses. The intent is to encourage vertically-mixed facilities at higher densities, and a main goal is to serve mobilous who desire housing, retail, and employment uses conveniently located within the same area. Please refer to Chapter 7 of the PUD code for further definition of this district.
CRV	63.74 Ac.	Commercial Recreational Resort: The Commercial Recreational Resort ("CRV") district is intended to provide for a commercially-run recreational vehicle (RV) resort. This recreational resort would contain RV facilities, camping sites, and even lodging with many amenities such as a central Clubhouse/lodge for meeting space, recreational facilities, and associated accessory uses. This resort would include up to 350 guest sites on 64 acres, and could involve necessary area to support the resort. Please refer to Chapter 8 of the PUD code for further definition of this district.
IM	36.95 Ac.	Modified Industrial: The Modified Industrial ("IM") district is intended to provide for light industrial activity, including research and development, warehousing, and other light industrial activities. Please refer to Chapter 10 of the PUD code for further definition of this district.
GOV	17.01 Ac.	Government: The Government ("GOV") district is intended to provide for land uses associated with governmental activities. The 17 acres within this area is designated for use by Government agencies, for facilities such as visitor centers, government offices, and other governmental activities. Please refer to Chapter 11 of the PUD code for further definition of this district.
O	62.36 Ac.	Open Space: The Open Space ("O") district is intended to provide land to be used for either public or private passive and active recreational area. Land area proposed under the Open Space ("O") zoning district include: undeveloped open spaces, parks, trails, conservation easement, and buffer areas. Please refer to Chapter 12 of the PUD code for further definition of this district.
O/E	52.47 Ac.	Open Space-Equestrian: The Open Space- Equestrian ("O/E") district is intended to provide land to be used for either equestrian uses. Land uses proposed under the "O/E" zoning district include: stables, corrals, trails, open space areas (vegetated), and ancillary recreational equestrian facilities within this area. Please refer to Chapter 13 of the PUD code for further definition of this district.
	Total: 624.33 Ac.	*

*Highway ROW of 13.80 Ac. Not included in zoning



URBAN DESIGN LAND PLANNING & LANDSCAPE ARCHITECTURE
NES

DMC
DAVID MONT CONSULTANTS, INC

PUD ZONING PLAN MAP

GUNNISON RISING
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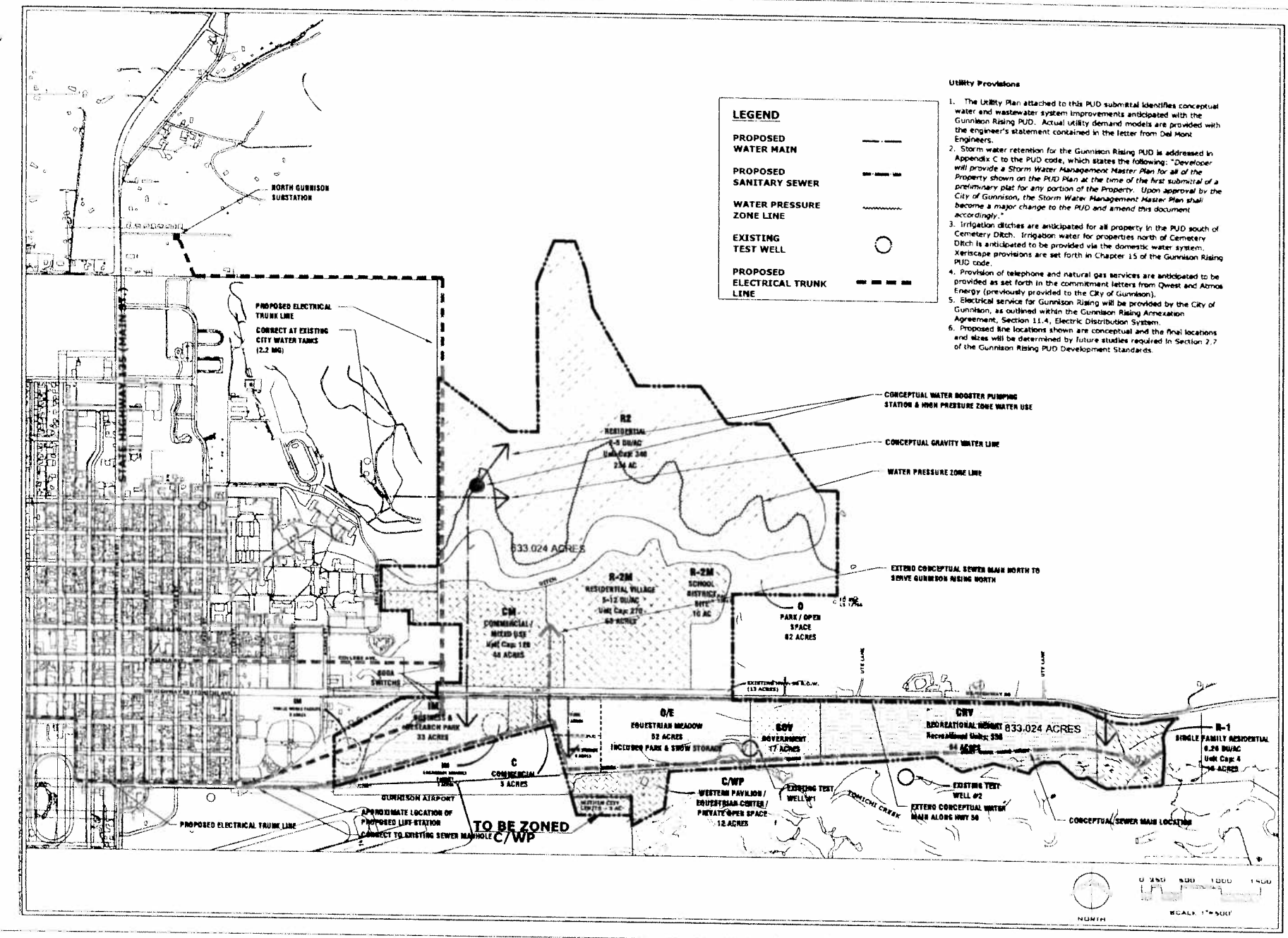
PROPOSED ZONING

4

S Dominguez Gunnison County, CO 597048
02/24/2010 12:23 PM Pg: 59 of 116
027 R: $581.00 D: $0.00



Utility Provisions

1. The Utility Plan attached to this PUD submittal identifies conceptual water and wastewater system improvements anticipated with the Gunnison Rising PUD. Actual utility demand models are provided with the engineer's statement contained in the letter from Del Mont Engineers.
2. Storm water retention for the Gunnison Rising PUD is addressed in Appendix C to the PUD code, which states the following: "*Developer will provide a Storm Water Management Master Plan for all of the Property shown on the PUD Plan at the time of the first submittal of a preliminary plat for any portion of the Property. Upon approval by the City of Gunnison, the Storm Water Management Master Plan shall become a major change to the PUD and amend this document accordingly.*"
3. Irrigation ditches are anticipated for all property in the PUD south of Cemetery Ditch. Irrigation water for properties north of Cemetery Ditch is anticipated to be provided via the domestic water system. Xeriscape provisions are set forth in Chapter 15 of the Gunnison Rising PUD code.
4. Provision of telephone and natural gas services are anticipated to be provided as set forth in the commitment letters from Qwest and Atmos Energy (previously provided to the City of Gunnison).
5. Electrical service for Gunnison Rising will be provided by the City of Gunnison, as outlined within the Gunnison Rising Annexation Agreement, Section 11.4, Electric Distribution System.
6. Proposed line locations shown are conceptual and the final locations and sizes will be determined by future studies required in Section 2.7 of the Gunnison Rising PUD Development Standards.

URBAN DESIGN LAND PLANNING & LANDSCAPE ARCHITECTURE

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PUD ZONING PLAN MAP

GUNNISON RISING

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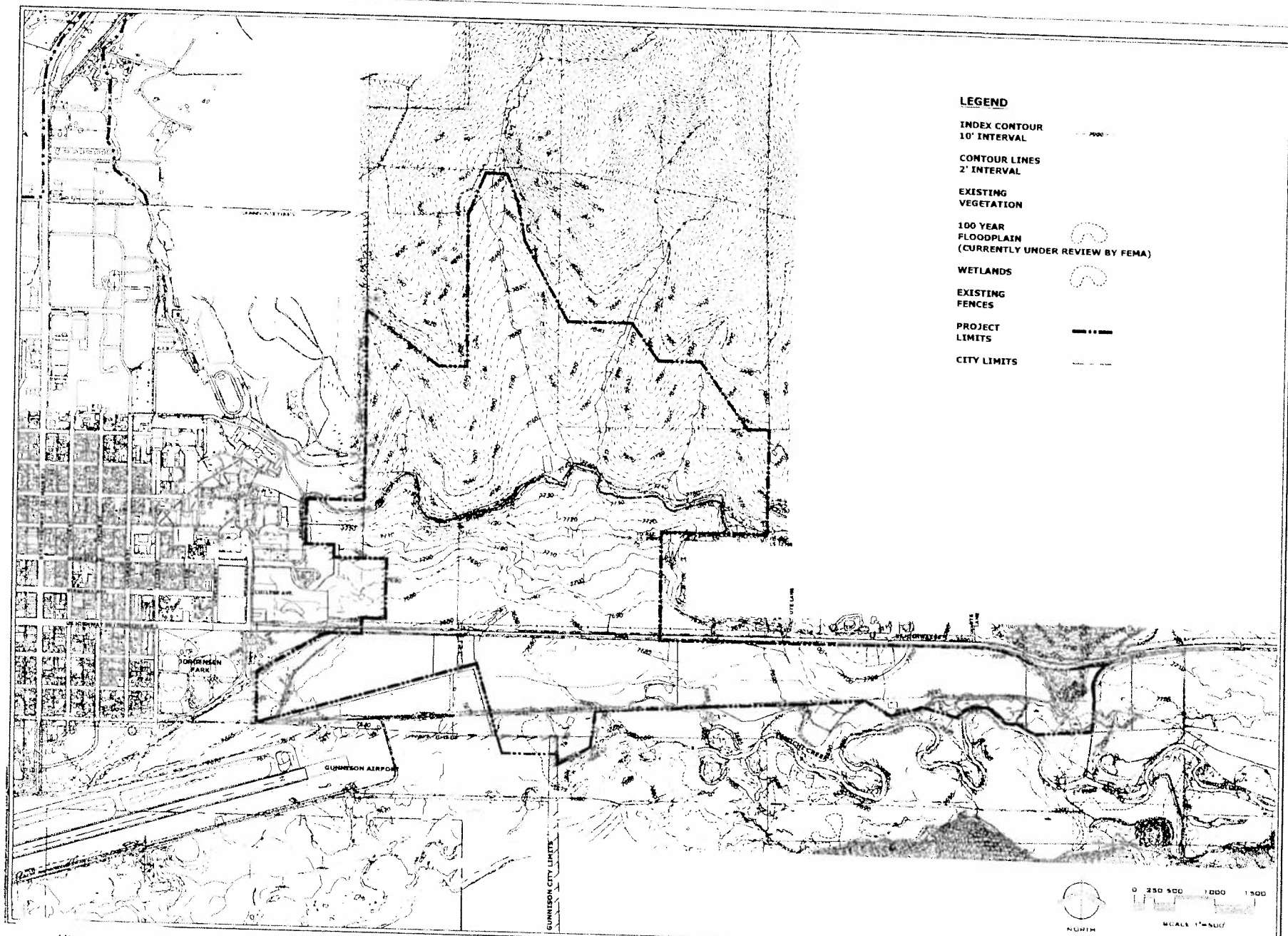
UTILITIES

5

S Dominguez Gunnison County, CO 597048
02/24/2010 12:23 PM Pg: 60 of 116
027 R: $581.00 D: $0.00



URBAN DESIGN
LAND PLANNING
& LANDSCAPE
ARCHITECTURE

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PUD ZONING
PLAN MAP

GUNNISON RISING
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SITE
CONTOURS &
FEATURES

6

S Dominguez Gunnison County, CO 597048
02/24/2010 12:23 PM R: $581.00 Pg: 61 of 116
027 D: $0.00

EXHIBIT D

WATER RIGHTS

GUNNISON VALLEY PARTNERS, LLC

WATER RIGHTS

A. Garfield Property (south of U.S. Highway 50)

1. Biebel Ditch, Ditch No. 1
   a. 2.146 cubic feet of water per second of time ("c.f.s.") out of Priority No. 1
   b. 11.37 c.f.s. out of Priority No. 199

2. Gullett-Tomichi Valley Ditch, Ditch No. 19
   a. 0.58 c.f.s. out of Priority No. 19
   b. 8.05 c.f.s. out of Priority No. 226

3. Gunnison and Tomichi Valley Ditch Association Ditch, Ditch No. 17
   a. 5.00 c.f.s. out of Priority No. 283

B. Wilson Property (north of U.S. Highway 50)

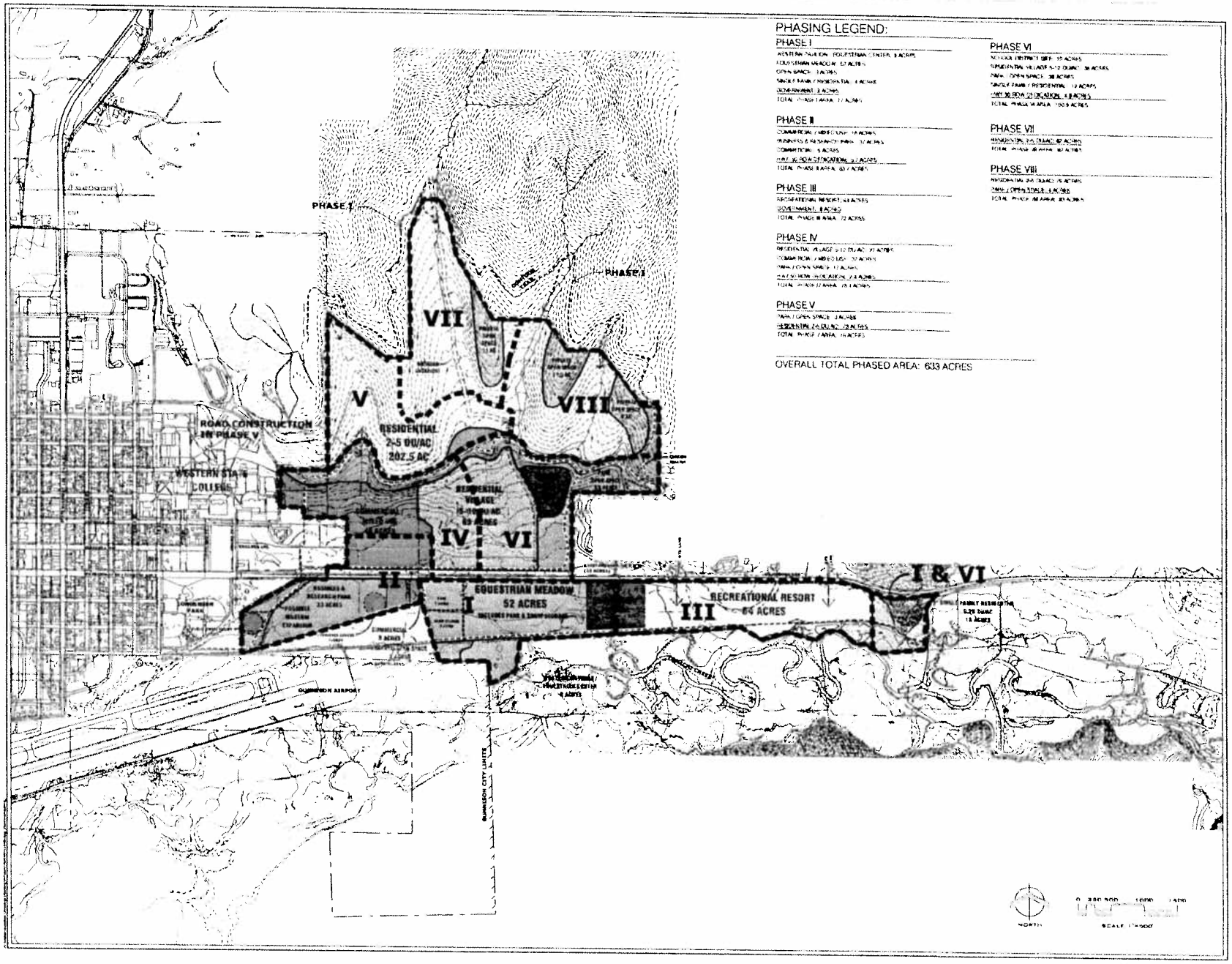
1. Gunnison and Tomichi Valley Ditch Association Ditch, Ditch No. 17
   a. 2.625 c.f.s out of Priority No. 11
   b. 1.750 c.f.s. out of Priority No. 76
   c. 1.375 c.f.s. out of Priority No. 94
   d. 13.250 c.f.s. out of Priority No. 283

2. Adams Ranch Well
   a. 0.10 c.f.s., which was awarded to said well in Case No. 97CW144 Ref. 89CW4, 81CW178, by Decree dated March 2, 2000, together with Well Permit No. 049406 F issued January 13, 1998.

EXHIBIT E

DEVELOPMENT PHASING PLAN

S Dominguez Gunnison County, CO 597048
02/24/2010 12:23 PM Pg: 64 of 116
027 R: $581.00 D: $0.00



PHASING LEGEND:

PHASE I
WESTERN ORIGIN / EQUESTRIAN CENTER: 8 ACRES
EQUESTRIAN MEADOW: 52 ACRES
OPEN SPACE: 3 ACRES
SINGLE FAMILY RESIDENTIAL: 4 ACRES
GOVERNMENT: 3 ACRES
TOTAL PHASE I AREA: 77 ACRES

PHASE II
COMMERCIAL / MIXED USE: 18 ACRES
BUSINESS & RESEARCH PARK: 37 ACRES
COMMERCIAL: 5 ACRES
HWY 50 ROW DEDICATION: 5.7 ACRES
TOTAL PHASE II AREA: 63.7 ACRES

PHASE III
RECREATIONAL RESORT: 63 ACRES
GOVERNMENT: 8 ACRES
TOTAL PHASE III AREA: 72 ACRES

PHASE IV
RESIDENTIAL VILLAGE 5-12 DU/AC: 27 ACRES
COMMERCIAL / MIXED USE: 32 ACRES
PARK / OPEN SPACE: 17 ACRES
HWY 50 ROW DEDICATION: 2.4 ACRES
TOTAL PHASE IV AREA: 78.4 ACRES

PHASE V
PARK / OPEN SPACE: 3 ACRES
RESIDENTIAL 2-5 DU/AC: 73 ACRES
TOTAL PHASE V AREA: 76 ACRES

PHASE VI
SCHOOL DISTRICT SITE: 10 ACRES
RESIDENTIAL VILLAGE 5-12 DU/AC: 36 ACRES
PARK / OPEN SPACE: 38 ACRES
SINGLE FAMILY RESIDENTIAL: 12 ACRES
HWY 50 ROW DEDICATION: 4.8 ACRES
TOTAL PHASE VI AREA: 100.8 ACRES

PHASE VII
RESIDENTIAL 2-5 DU/AC: 67 ACRES
TOTAL PHASE VII AREA: 67 ACRES

PHASE VIII
RESIDENTIAL 2-5 DU/AC: 75 ACRES
PARK / OPEN SPACE: 4 ACRES
TOTAL PHASE VIII AREA: 80 ACRES

OVERALL TOTAL PHASED AREA: 633 ACRES

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DEL MONTE CONSULTANTS

NES

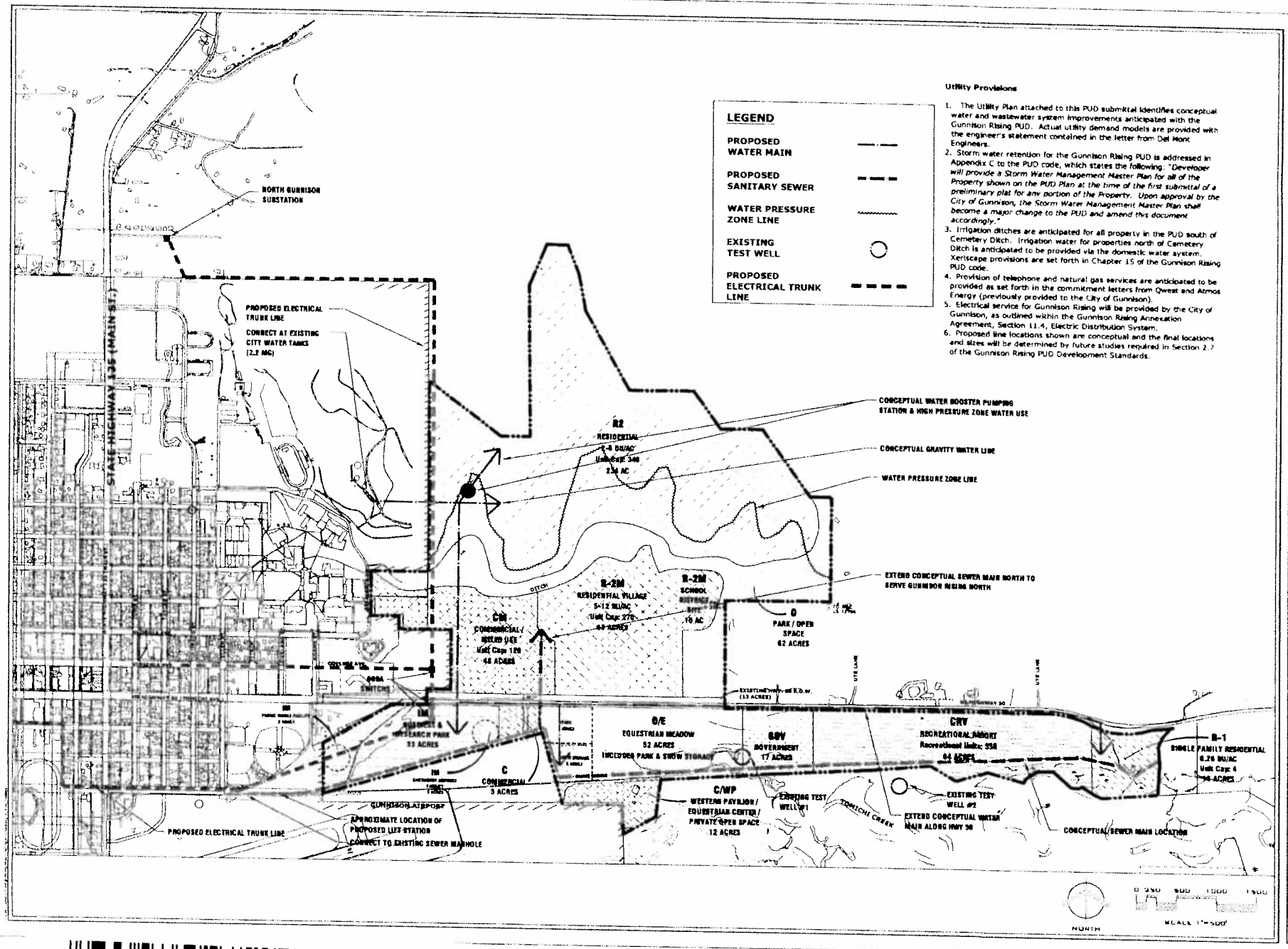
DEVELOPMENT PHASING PLAN

GUNNISON RISING
Authentically Colorado

EXHIBIT E
ANNEXATION AGREEMENT

EXHIBIT F

UTILITIES MASTER PLAN



Utility Provisions

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4. Provision of telephone and natural gas services are anticipated to be provided as set forth in the commitment letters from Qwest and Atmos Energy (previously provided to the City of Gunnison).
5. Electrical service for Gunnison Rising will be provided by the City of Gunnison, as outlined within the Gunnison Rising Annexation Agreement, Section 11.4, Electric Distribution System.
6. Proposed line locations shown are conceptual and the final locations and sizes will be determined by future studies required in Section 2.7 of the Gunnison Rising PUD Development Standards.

URBAN DESIGN
LAND PLANNING
& LANDSCAPE
ARCHITECTURE

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UTILITIES
MASTER PLAN

GUNNISON
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EXHIBIT F
ANNEXATION
AGREEMENT

S Dominguez Gunnison County, CO 597048
02/24/2010 12:23 PM Pg: 66 of 116
027 R: $581.00 D: $0.00

EXHIBIT G

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "MOA" or the "Agreement") is made and entered into as of the ____ day of _____, 2009, by and between the City of Gunnison, Colorado, a municipal corporation (hereinafter referred to as the "City"); Gunnison Valley Partners, LLC, a Colorado limited liability company, and Gunnison Gateway, LLC, a Colorado limited liability company (the "Developers") (City and Developers are hereinafter collectively referred to as the "GUNNISON PARTIES"); the State of Colorado, Department of Higher Education acting by and through the Trustees of Western State College of Colorado for the use and benefit of Western State College of Colorado as successor in interest to the Trustees of the State Colleges in Colorado hereinafter referred to as "WSC"); and Western State College Foundation (hereinafter referred to as the "Foundation"), City, WSC, Foundation and Developers are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Developers desire to annex to the City certain lands, owned by Developers, which are located east of certain property owned by WSC and the Foundation and north of U.S. Highway 50 (referred to herein as the "Annexable Property", which does not include any portion of the WSC Land or Georgia Avenue through WSC which is already within the City's boundaries) and, in connection therewith, the City and the Developers desire to extend an existing City street (Georgia Avenue) through lands owned by WSC and the Foundation (collectively referred to herein as the "WSC Land") to connect to a new road to be constructed within the Annexable Property; and

WHEREAS, as a condition to granting an easement to the City to extend Georgia Avenue from Adams Street through the WSC Land to connect to a new road within the Annexable Property (referred to herein as the "Georgia Avenue Extension"), WSC and the Foundation require the GUNNISON PARTIES to implement certain measures to mitigate the impact on the Western State College campus that could result from extending Georgia Avenue through the WSC Land; and

WHEREAS, the development of the Annexable Property will be subject to the requirements of development standards in the planned unit development zoning of the Annexable Property proposed by the Developers, subject to approval by the City (which development standards are referred to herein as the "Gunnison Rising PUD") and the annexation agreement between the City and the Developers (referred to herein as the "Annexation Agreement"); and

WHEREAS, the City and the Developers agree to those mitigation measures that are set forth herein; and

WHEREAS, attached hereto as Exhibit A is a map identifying the location of the various improvements and mitigation measures contemplated by this MOA. The map is for illustrative purposes only and shall not be deemed to amend or modify any provisions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. The following defined terms when used in this Agreement shall have the meanings set forth below:

a. "Adams Entrance Improvements" shall mean and refer to streetscape treatments and enhancements to be constructed at the Adams Street entry into the College from U.S. Highway 50 north to Georgia Avenue in order to enhance pedestrian and bicyclist safety and to improve non-motorized and pedestrian traffic.

b. "Buffer" shall mean and refer to a buffer containing hardscape and landscape materials to be constructed along the eastern perimeter of Escalante Drive that is in compliance with the provisions of the Gunnison Rising PUD.

c. "Eastern Entrance" shall mean and refer to a new campus entrance to be constructed on WSC Land to the east of the Aspinall-Wilson Center that is aesthetically consistent with the existing campus architecture to make it clear that traffic is entering the college grounds.

d. "Georgia Avenue Extension and Reconstruction" shall mean and refer to the extension of Georgia Avenue into the Annexable Property and reconstruction of existing Georgia Avenue east of Loveland Street to the extent required to accommodate additional traffic on Georgia Avenue.

e. "Georgia Avenue Street Master Plan" shall mean and refer to a plan for improvements to Georgia Avenue from Main Street to a connection within the Annexable Property that provides a complete street plan approach, including traffic calming, pedestrian accessibility and multimodal treatments consistent with the terms of this MOA.

f. "Multimodal Improvements" shall mean and refer to improvements and/or modifications to be constructed on Georgia Avenue east of Loveland Street to provide greater opportunity for multimodal travel (i.e., pedestrian and bicycle) (which improvements may include speed controls, traffic calming, pedestrian/bike path, and crosswalk controls).

g. "Parking Lot Relocation" shall mean and refer to the removal and relocation of a portion of the parking lot for the Aspinall-Wilson Center to the east side of the Center as required to complete construction of the Georgia Avenue Extension and Reconstruction and Eastern Entrance.

h. "Pedestrian Plaza" shall mean and refer to a pedestrian plaza to be constructed at the north end of Escalante Drive between the north entrance to the WSC library parking lot and the entrance to the Mountaineer Bowl.

i. "Roadway Easements" shall mean and refer to the Public Roadway and Utility Easements in substantially the form attached hereto as Exhibits B and C.

2. GUNNISON PARTIES agree that the Developers and City staff shall design a Georgia Avenue Street Master Plan extending from Main Street to the west end of the Annexable Property east of

the Aspinall-Wilson Center. The Georgia Avenue Street Master Plan shall include any portion of the WSC Land lying within the Roadway Easements. The portion of the Georgia Avenue Street Master Plan from Colorado Avenue to the eastern boundary of the WSC Land shall be consistent with the architecture of the improvements on the WSC Land in the vicinity of Georgia Avenue and shall be subject to approval by the President of WSC and the Executive Director of the Foundation prior to being submitted to City Council for review and approval. Express approval of this portion of the Georgia Avenue Street Master Plan by the President of WSC is a condition precedent to the commencement of construction of improvements on any portion of the WSC Land. The City will incorporate the Georgia Avenue Street Master Plan as a revision to the City Master Plan at no cost to WSC or the Foundation.

3. Construction of the following improvements shall be conditions precedent to use of the Roadway Easements for any purpose other than construction of improvements within the Roadway Easements which have been approved pursuant to the provisions of this MOA: (a) Adams Entrance Improvements; (b) Buffer; (c) Eastern Entrance; (d) Georgia Avenue Extension and Reconstruction; (e) Multimodal Improvements; (f) Pedestrian Plaza; and (g) Parking Lot Relocation. WSC and the Foundation shall not bear any costs of these improvements or any other improvements that are the subject of this Agreement.

4. In conjunction with the GUNNISON PARTIES' construction on the portion of the Annexable Property that abuts or is in the vicinity of Escalante Drive, the GUNNISON PARTIES shall construct the Buffer on the Annexable Land. Prior to constructing the Buffer, the GUNNISON PARTIES shall consult with WSC regarding the design of the Buffer and shall provide WSC with landscape drawings, grading plans, and/or proposals depicting the Buffer. The final design of the Buffer shall be subject to the approval by the President of WSC and the City prior to commencement of construction of the Buffer. Express approval of the Buffer by the President of WSC is a condition precedent to the commencement of construction of the Buffer. All costs of design and construction of the Buffer shall be borne by the GUNNISON PARTIES.

5. The GUNNISON PARTIES shall design and construct MultiModal Improvements and/or modifications on Georgia Avenue east of Loveland Street as shown on the Georgia Avenue Street Master Plan. All costs of design and construction of these Multimodal Improvements, including the intersection of Georgia Avenue and Adams Street, shall be borne by the GUNNISON PARTIES. Prior to constructing the Multimodal Improvements and other improvements as part of the Georgia Avenue Extension and Reconstruction, the GUNNISON PARTIES shall consult with WSC regarding the design of the Multimodal Improvements and such other improvements and shall provide WSC with drawings and/or proposals depicting the Multimodal Improvements and such other improvements. Prior to commencement of construction of the Multimodal Improvements, the final design of the Multimodal Improvements shall be subject to approval by the City pursuant to the City Master Plan revision process as defined in the City of Gunnison Municipal Code and by the President of WSC. Express approval of such improvements by the President of WSC is a condition precedent to the commencement of construction of such improvements on WSC Land.

6. WSC and the Foundation agree to grant easements to the City to the extent required for the construction of the Multimodal Improvements and the other improvements described in this Agreement. Express approval of such improvements by the President of WSC is a condition precedent to the construction of any improvements pursuant to such easements.

7. The GUNNISON PARTIES shall construct the Pedestrian Plaza at the north end of Escalante Drive between the north entrance to the WSC library parking lot and the entrance to the Mountaineer Bowl. Prior to constructing the Pedestrian Plaza, GUNNISON PARTIES shall consult with the President of WSC regarding the design of the Pedestrian Plaza and shall provide the President of WSC with drawings and/or proposals depicting the Pedestrian Plaza. The final design of the Pedestrian Plaza shall be subject to the express approval by the President of WSC prior to commencement of construction of the Pedestrian Plaza. Express approval of the Pedestrian Plaza by the President of WSC shall be a condition precedent to commencement of construction of such improvements on WSC Land. All costs of design and construction of the Pedestrian Plaza shall be borne by the GUNNISON PARTIES.

8. The GUNNISON PARTIES shall construct and install the Adams Entrance Improvements at the Adams Street entry into the College from U.S. Highway 50 north to Georgia Avenue. WSC agrees to grant temporary and permanent easements to the GUNNISON PARTIES to the extent required for the construction of the Adams Entrance Improvements. Prior to constructing the Adams Entrance Improvements, the GUNNISON PARTIES shall consult with WSC regarding the design of the Adams Entrance Improvements and shall provide WSC with drawings and/or proposals depicting the Adams Entrance Improvements. The final design of the Adams Entrance Improvements shall be subject to the approval of the President of WSC and the City prior to commencement of construction of the Adams Entrance Improvements. Express approval of the Adams Entrance Improvements by the President of WSC is a condition precedent to commencement of construction of the Adams Entrance Improvements on WSC Land. All costs of design and construction of the Adams Entrance Improvements shall be borne by the GUNNISON PARTIES.

9. The GUNNISON PARTIES agree to preserve the existing number of parking spaces currently existing along Georgia Avenue between Loveland Street and the Aspinall-Wilson Center unless and until plans are provided to and approved by the President of WSC for improvements such as pedestrian and vehicle safety improvements, a trail and bike path, sidewalks, public transportation or other Multimodal Improvements that require a modification of such existing parking spaces. Express approval by the President of WSC is a condition precedent prior to making any changes to the number of parking spaces along Georgia Avenue from Adams Street to Escalante Drive. Approval by the City is a condition precedent prior to making any changes to the number of parking spaces along Georgia Avenue from Loveland Street to Adams Street.

10. The GUNNISON PARTIES shall construct traffic calming measures in order to minimize the volume and speed of vehicular traffic through the campus and the Eastern Entrance in conjunction with the construction of the Georgia Avenue Extension and Reconstruction and shall replace and maintain the existing asphalt surface in order to accommodate the increased traffic and continued need for parking in this area. The Eastern Entrance shall be aesthetically consistent with the architecture of the campus, thereby making it clear that traffic is entering the College grounds. Prior to constructing the Georgia Avenue Extension and Reconstruction, the GUNNISON PARTIES shall consult with WSC regarding the design of the Georgia Avenue Extension and Reconstruction and the Eastern Entrance and shall provide WSC with drawings and/or proposals depicting the Georgia Avenue Extension and Reconstruction and the Eastern Entrance. The final design of the Georgia Avenue Extension and Reconstruction and the Eastern Entrance shall be subject to the approval by the President of WSC and the City prior to commencement of construction of the Georgia Avenue Extension and Reconstruction or the Eastern Entrance. All costs of design and construction of the Georgia Avenue Extension and Reconstruction and the Eastern Entrance shall be borne by the GUNNISON PARTIES. Express approval of the Georgia Avenue Extension and

Reconstruction and the Eastern Entrance by the President of WSC is a condition precedent to the commencement of construction of such improvements on WSC Land.

11. The GUNNISON PARTIES shall complete the Parking Lot Relocation in conjunction with construction of the Georgia Avenue Extension and Reconstruction and the Eastern Entrance. Prior to constructing the Parking Lot Relocation, the GUNNISON PARTIES shall consult with the Foundation regarding the design of the Parking Lot Relocation and shall provide the Foundation with drawings and/or proposals depicting the Parking Lot Relocation. The final design of the Parking Lot Relocation shall be subject to the approval by the Board of Trustees of the Foundation and the City prior to commencement of construction of the Parking Lot Relocation. All costs of design and construction of the Parking Lot Relocation shall be borne by the GUNNISON PARTIES.

12. In consideration of the agreements of the GUNNISON PARTIES set forth above, WSC and the Foundation agree to execute the Roadway Easements contemporaneously with their execution of this Agreement and to provide a copy of the executed Roadway Easements to the City upon execution of this Agreement by the GUNNISON PARTIES, WSC, and the Foundation. The GUNNISON PARTIES acknowledge that delivery and recordation of the original Roadway Easements shall not occur until (i) this MOA and the Roadway Easements have been approved and executed by the Office of the Attorney General of the State of Colorado and by the Department of Personnel & Administration, Real Estate Programs, State of Colorado, and (ii) approval of the annexation of the Annexable Property by the Gunnison City Council. The GUNNISON PARTIES further acknowledge and agree that construction of roadway improvements and utilities pursuant to the Roadway Easements shall not occur until the original Roadway Easements have been recorded by the City and all other conditions to use of the Roadway Easements set forth herein have been satisfied.

13. The GUNNISON PARTIES agree that, subject to any requirements of the City or the Colorado Department of Transportation ("CDOT") for emergency access to the Annexable Property via the Georgia Avenue Extension, no construction of the Georgia Avenue Extension and Reconstruction and Eastern Entrance shall commence prior to the GUNNISON PARTIES constructing one or more direct access points from U.S. Highway 50 into the Annexable Property and extending College Avenue into the Annexable Property. WSC and the Foundation agree that the GUNNISON PARTIES may construct temporary emergency access improvements within the right of way for the Georgia Avenue Extension if the City or CDOT requires such an emergency access point as a condition of construction of the direct access point from U.S. Highway 50 into the Annexable Property. In no instance shall construction traffic be considered an "emergency" under this paragraph.

14. During construction on the Annexable Property the Georgia Avenue Extension shall not be used for construction traffic to and from the Annexable Property. At no time shall construction traffic be allowed to travel through the WSC campus to and from the Annexable Property.

15. WSC and the Foundation acknowledge and agree that all designs of improvements to be located on the Annexable Property and that are subject to their approval under this MOA shall be consistent with the Gunnison Rising PUD. WSC and the Foundation also acknowledge and agree that, under the Annexation Agreement and the PUD zoning of the Annexable Property, the City is required to approve all improvements provided for under the Annexation Agreement, including those required under this MOA, and that no approval or disapproval by WSC or the Foundation shall affect the authority of the City to approve or disapprove such improvements. The GUNNISON PARTIES acknowledge and agree that approval

of improvements subject to this MOA by the City shall not affect the authority of WSC or the Foundation to approve or disapprove any improvements subject to this MOA. The GUNNISON PARTIES, WSC and the Foundation agree to incorporate the terms and obligations of this Agreement into the Roadway Easements. Nothing contained herein shall subject the WSC Land, WSC or the Foundation to the Gunnison Rising PUD or the Annexation Agreement.

16. The final construction drawings and the timing of construction of all improvements that are the subject of this Agreement shall be prepared in accordance with the City's standard policies and procedures, including the requirements and procedures set forth in Subdivision Improvement Agreements between the Developers and the City, but such City requirements and procedures shall not conflict with the express provisions of this Agreement. All construction drawings for improvements to be constructed on WSC Land are subject to the express approval by the President of WSC or the Executive Director of the Foundation as set forth in this MOA.

17. The President of WSC may delegate his authority and obligations under this Agreement to one or more employees of WSC and shall provide written notice of any such delegation to the GUNNISON PARTIES, identifying the person or persons to whom such delegation has been made and the scope of such person's authority and responsibility.

18. Any notice required or permitted under this Agreement will be deemed to be received when delivered personally in writing or seven (7) days after notice has been deposited with the U.S. Postal Service, postage prepaid, certified and return receipt requested, and addressed as follows:

If to the Developers:
Gunnison Valley Partners, LLC
2 North Cascade Avenue, Suite 1280
Colorado Springs, Colorado 90903
AND
Gunnison Gateway, LLC
c/o Rufus Wilderson
525 N. Main Street
Gunnison, Colorado 81230

If to the City:
City of Gunnison
201 W. Virginia Avenue
Gunnison, Colorado 81230
Attn: City Manager

If to WSC:
Board of Trustees for
Western State College of Colorado
Taylor Hall, Room 210
600 North Adams Street
Gunnison, Colorado 81231
Attn: Office of the President

If to Foundation:
Western State College Foundation, Inc.
909 E. Escalante Drive
Gunnison, Colorado 81230

19. The Agreement is executed in Gunnison County, Colorado, and shall be interpreted, construed, and governed by the laws of the State of Colorado without, however, giving effect to Colorado choice of law principles.

20. Jurisdiction and venue of any action as to this Agreement and the interpretation, enforcement, or the determination of the rights and duties of the parties hereto shall be the District Court of Gunnison County, Colorado. Each party submits to the personal jurisdiction of the District Court of Gunnison County, Colorado and waives any and all rights under the laws of any other State or County to object to the jurisdiction of the District Court of Gunnison County, Colorado as to any action pertaining to this Agreement.

21. No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances. This Agreement may be amended only by a written instrument signed by all Parties to this Agreement and approved by the Office of the Attorney General of the State of Colorado.

22. If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement shall continue in full force and effect as if the offending term, condition, or provision were never part of this Agreement.

23. Following the execution of this Agreement, the Parties agree to do all acts, including the execution of appropriate documents, when requested by any other Party, where such acts are reasonably required to fulfill the performing Party's obligations under this Agreement.

24. This Agreement shall be effective and binding on the Parties and their respective successors and assigns upon execution by all of the Parties, subject only to approval of this Memorandum of Agreement by the Office of the Attorney General of the State of Colorado and by the Department of Personnel & Administration, Real Estate Programs, State of Colorado. If the City fails to approve the annexation of the Annexable Property on or before March 31, 2010, or if the Annexable Property is subsequently de-annexed from the City for any reason, this MOA and its associated easements shall terminate and be of no further force or effect. The parties agree that they shall provide written notice of any assignment of their interests or obligations under this Agreement to the other Parties to this Agreement.

25. Exhibits to this MOA. Attached and incorporated herein to this MOA are the following Exhibits:

Exhibit A – Map of Improvements
Exhibit B – WSC Public Roadway and Utility Easement (and its Exhibit A)
Exhibit C – Foundation Public Roadway and Utility Easement (and its Exhibit A)

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the latest date below a Party's signature below.

CITY:

CITY OF GUNNISON, COLORADO, a municipal corporation

ATTEST:

_____

_____, City Clerk

By: _____

_____, Mayor

Date: _____, 2009

APPROVED AS TO FORM:

GUNNISON CITY ATTORNEY'S OFFICE

By: _____

WSC:

The State of Colorado, Department of Higher Education, acting by and through the Trustees of Western State College of Colorado, for the use and benefit of Western State College of Colorado, as successor in interest to the Trustees of the State Colleges in Colorado, for the use and benefit of Western State College

By: _____

Name: _____

Title: _____

Date: _____, 2009

APPROVED:

STATE OF COLORADO
DEPARTMENT OF PERSONNEL &ADMINISTRATION
REAL ESTATE PROGRAMS

By: _____

For the Executive Director

LEGAL REVIEW:

DEPARTMENT OF LAW
ATTORNEY GENERAL (or authorized Delegate)

By: _____
Title: _____
Date: _____

FOUNDATION:

WESTERN STATE COLLEGE FOUNDATION

By: _____
Its: _____
Date: _____, 2009

DEVELOPERS:

GUNNISON VALLEY PARTNERS, LLC, a
Colorado limited liability company

By: SCHUCK GUNNISON LLLP, a
Colorado limited liability limited partnership,
Its: Managing Member

By: Schuck Colorado, Ltd., a Colorado
corporation, General Partner

By: _____
Its: President
Date: _____, 2009

GUNNISON GATEWAY, LLC, a
Colorado limited liability company

By: _____
Its: Vice-Manager
Date: _____, 2009

EXHIBIT A TO THE MOA

MAP OF IMPROVEMENTS

EXHIBIT B TO THE MOA

PUBLIC ROADWAY AND UTILITY EASEMENT

The State of Colorado, Department of Higher Education, acting by and through the Trustees of Western State College of Colorado, for the use and benefit of Western State College of Colorado, as successor in interest to the Trustees of the State Colleges in Colorado, for the use and benefit of Western State College ("WSC"), hereby acknowledges receipt of Ten and No/100ths Dollars ($10.00), and other good and valuable consideration including the completion of those certain terms and obligations set forth in that certain Memorandum of Agreement ("MOA") dated _____, 2009, from THE CITY OF GUNNISON, COLORADO, a municipal corporation of the State of Colorado ("City"), in consideration of which WSC hereby grants, quitclaims and conveys unto City, its successors and assigns, a permanent public easement upon, over, and across the real property described in Exhibit A attached hereto and incorporated herein by this reference (the "Roadway") for (i) a public right of way as part of the City's public street system, including the construction, maintenance, repair and replacement of curb, gutter, asphalt and/or concrete roadway surface, landscaping, and storm drainage facilities (collectively "Roadway Improvements"), and (ii) constructing, maintaining, repairing, replacing, and utilizing utility lines owned or to be owned by City or other parties to whom City grants a license or other approval to so use the Roadway. The Roadway shall be an extension of Georgia Avenue, an existing public street.

TOGETHER WITH the right to enter upon the property owned by WSC which lies within ten (10) feet of the boundary lines of the Roadway for the purpose of constructing, maintaining, repairing, replacing, and removing Roadway Improvements and utility lines to be located within the Roadway. City shall restore any portion of such adjacent property or the Roadway which is disturbed or damaged by City to its prior condition. City or a party designated by the City shall be solely responsible for constructing, maintaining, repairing, and replacing Roadway Improvements and utility lines placed within the Roadway.

The terms, conditions, and obligations of the MOA are hereby incorporated into and made a part of this easement.

Any notice required or permitted by this easement will be delivered, sent, and effective in accordance with Section 18 of the MOA.

This easement shall be governed by the laws of the State of Colorado.

The rights, privileges, obligations, and burdens of this Easement shall be binding upon and inure to the benefit of the WSC and the City and their respective successors and assigns.

EXECUTED as of the _____ day of _____, 2009.

CITY:

CITY OF GUNNISON, COLORADO, a municipal corporation

ATTEST:

_____
_____, City Clerk

By: _____
_____, Mayor

Address: 201 W. Virginia Avenue
Gunnison, CO 81230

APPROVED AS TO FORM:

GUNNISON CITY ATTORNEY'S OFFICE

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Public Roadway and Utility Easement was acknowledged before me this ____ day of _____, 2009, by _____, as Mayor of the **CITY OF GUNNISON, COLORADO,** a municipal corporation, and attested to by _____, City Clerk.

WITNESS my hand and official seal.

My commission expires:_____

_____
Notary Public

WSC:

State of Colorado, Department of Higher Education, acting by and through the Trustees of Western State College of Colorado, for the use and benefit of Western State College of Colorado, as successor in interest to the Trustees of the State Colleges in Colorado for the use and benefit of Western State College

By: _____
Name: _____
Title: _____

Address: Board of Trustees for
Western State College of Colorado
Taylor Hall, Room 210
600 North Adams Street
Gunnison, CO 81231

APPROVED:

DEPARTMENT OF PERSONNEL & ADMINISTRATION
REAL ESTATE PROGRAMS
For the Executive Director

By: _____
Title: _____
Date: _____

LEGAL REVIEW:

DEPARTMENT OF LAW
ATTORNEY GENERAL (or authorized delegate)

By: _____
Title: _____
Date: _____, 2009

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Public Roadway and Utility Easement was acknowledged before me this _____ day of _____, 2009, by _____, as _____ of the State of Colorado, Department of Higher Education, acting by and through the Trustees of Western State College of Colorado, for the use and benefit of Western State College of Colorado, as successor in interest to Trustees of the State Colleges in Colorado , for the use and benefit of Western State College

WITNESS my hand and official seal.

My commission expires: _____

_____
Notary Public

EXHIBIT A
TO THE
WSC PUBLIC ROADWAY AND UTILITY EASEMENT
LEGAL DESCRIPTION OF ROADWAY

An easement for public roadway and utilities across a portion of a tract of land described by a land patent No. 1833 filed on June 6, 1956 in Book 358 at Page 383 in the records of Gunnison County, located in the Southeast Quarter of Section 36, T50N, R1W of the New Mexico Principal Meridian, Gunnison County, Colorado, more particularly described as follows:

Beginning at the northeast corner of Lot 2, Meldrum Subdivision as filed at Reception Number 552701 in the records of said Gunnison County, thence the following courses:

1. South 89° 59' 20" West 477.46 along a line which is the easterly extension of the south right-of-way of Georgia Avenue to the northwest corner of said Lot 2;

2. North 0° 00' 40" West 90.00 feet along a line which is the northerly extension of the East right-of-way of Adams Street;

3. North 89° 59' 20" East 658.00 feet along a line which is 90 feet north of and parallel to the easterly extension of said south right-of-way of said Georgia Avenue to the west boundary of a tract of land described in Book 592 at Page 374 in the records of said Gunnison County;

4. South 00º 20' 16" West 90.00 feet on said west boundary;

5. South 89º 59' 20" West 180.00 feet on said boundary along a line which is the easterly extension of the south right-of-way line of said Georgia Avenue to the point of beginning of the herein described easement.

EXHIBIT C TO THE MOA

PUBLIC ROADWAY AND UTILITY EASEMENT

WESTERN STATE COLLEGE FOUNDATION, acting by and through its Board of Trustees (the "Foundation"), hereby acknowledges receipt of Ten and No/100ths Dollars ($10.00), and other good and valuable consideration including the completion of those certain terms and obligations set forth in that certain Memorandum of Agreement ("MOA") dated _____, 2009, from THE CITY OF GUNNISON, COLORADO, a municipal corporation of the State of Colorado ("City"), in consideration of which the Foundation hereby grants, quitclaims and conveys unto City, its successors and assigns, a permanent public easement upon, over, and across the real property described in Exhibit A attached hereto and incorporated herein by this reference (the "Roadway") for (i) a public right of way as part of the City's public street system, including the construction, maintenance, repair and replacement of curb, gutter, asphalt and/or concrete roadway surface, landscaping, and storm drainage facilities (collectively "Roadway Improvements"), and (ii) constructing, maintaining, repairing, replacing, and utilizing utility lines owned or to be owned by City or other parties to whom City grants a license or other approval to so use the Roadway. The Roadway shall be an extension of Georgia Avenue, an existing public street.

TOGETHER WITH the right to enter upon the property owned by the Foundation which lies within ten (10) feet of the boundary lines of the Roadway for the purpose of constructing, maintaining, repairing, replacing, and removing Roadway Improvements and utility lines to be located within the Roadway. City shall restore any portion of such adjacent property or the Roadway which is disturbed or damaged by City to its prior condition. City or a party designated by the City shall be solely responsible for constructing, maintaining, repairing, and replacing Roadway Improvements and utility lines placed within the Roadway.

The terms, conditions, and obligations of the MOA are hereby incorporated into and made a part of this easement.

Any notice required or permitted by this easement will be delivered, sent, and effective in accordance with Section 18 of the MOA.

This easement shall be governed by the laws of the State of Colorado.

The rights, privileges, obligations, and burdens of this Easement shall be binding upon and inure to the benefit of the Foundation and the City and their respective successors and assigns.

EXECUTED as of the _____ day of _____, 2009.

CITY:

CITY OF GUNNISON, COLORADO, a municipal corporation

By: _____
_____, Mayor

ATTEST:

_____
_____, City Clerk

Address: 201 W. Virginia Avenue
Gunnison, CO 81230

APPROVED AS TO FORM:

GUNNISON CITY ATTORNEY'S OFFICE

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Public Roadway and Utility Easement was acknowledged before me this ____ day of _____, 2009, by _____, as Mayor of the **CITY OF GUNNISON, COLORADO,** a municipal corporation, and attested to by _____, City Clerk.

WITNESS my hand and official seal.

My commission expires:_____

_____
Notary Public

FOUNDATION:

WESTERN STATE COLLEGE FOUNDATION, a Colorado non-profit corporation

By: _____
Name: _____
Title: _____

Address: 909 E. Escalante Drive
Gunnison, CO 81230

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Public Roadway and Utility Easement was acknowledged before me this _____ day of _____, 2009, by _____, as _____ of **WESTERN STATE COLLEGE FOUNDATION**, a Colorado non-profit corporation.

WITNESS my hand and official seal.

My commission expires: _____

_____
Notary Public

EXHIBIT A
TO THE
FOUNDATION PUBLIC ROADWAY AND UTILITY EASEMENT
LEGAL DESCRIPTION OF ROADWAY

An easement for public roadway and utilities across a portion of a tract of land described by a deed filed on May 5, 1983 in Book 592 at Page 374 in the records of Gunnison County, located in the Southeast Quarter of Section 36, T50N, R1W of the New Mexico Principal Meridian, Gunnison County, Colorado, more particularly described as follows:

Beginning at a point on the west boundary of said tract at the easterly extension of the south right-of-way line of Georgia Avenue, said point is also the point of beginning of said tract described in Book 592 at Page 374, thence the following courses:

1. North 0° 20' 16" East 90.00 feet along the west boundary of said tract of land;

2. North 89° 59' 20" East 354.96 feet along a line 90 feet north of and parallel to said easterly extension of the south right-of-way of said Georgia Avenue to the east boundary of said tract of land;

3. South 0° 20' 16" West 90.00 feet along said east boundary;

4. South 89° 59' 20" West 354.96 feet along a line which is an easterly extension of said south right-of-way of said Georgia Avenue to the point of beginning of the herein described easement.

EXHIBIT H

RETA DECLARATION

REAL ESTATE TRANSFER ASSESSMENT DECLARATION

FOR

GUNNISON RISING

REAL ESTATE TRANSFER ASSESSMENT DECLARATION

FOR

GUNNISON RISING

Table of Contents

Page

1.1 Property 1

1.2 Purposes of RETA Declaration 1

1.3 RETA Declaration 1

1.4 Applicability of Colorado Common Interest Ownership Act 1

ARTICLE 2 DEFINITIONS 2

2.1 Act 2

2.2 Annexation Agreement 2

2.3 Business Association 2

2.4 City 2

2.5 Consenting Owner 2

2.6 Consideration 2

2.7 Declarant 2

2.8 Deed of Trust 2

2.9 District 2

VOI

2.10 Escrowed Assessments 3

2.11 Mortgage 3

2.12 Mortgagee 3

2.13 Mortgagor 3

2.14 Owner 3

2.15 Person 3

2.16 Property 3

2.17 Real Estate Transfer Agreement 3

2.18 Record or Recorded 3

2.19 RETA Declaration 4

2.20 Site 4

2.21 Transfer4

2.22 Transferee 4

2.23 Transferor 4

ARTICLE 3 REAL ESTATE TRANSFER ASSESSMENT 4

3.1 Obligation and Lien for Assessment4

3.2 Exempt Transactions 5

3.3 City Review of Exemptions 7

3.4 Interest 7

3.5 Attribution of Payments 7

3.6 Notice of Default and Collection of Assessments 7

3.7 Remedies to Enforce Assessments 8

3.8 Lawsuit to Enforce Assessments 8

3.9 Lien to Enforce Assessments 8

ARTICLE 4 **MISCELLANEOUS** **9**

4.1 Term of RETA Declaration 9

4.2 Amendment of RETA Declaration 9

4.3 Priority of First Mortgage Over Assessments 9

4.4 Notices 9

4.5 Costs and Attorneys' Fees 9

4.6 Governing Law; Venue 10

4.7 Severability 10

4.8 Number and Gender 10

4.9 Captions for Convenience 10

SIGNATURES **10-14**

EXHIBIT A **A-1**

S Dominguez Gunnison County, CO 597048
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REAL ESTATE TRANSFER ASSESSMENT DECLARATION

FOR

GUNNISON RISING

THIS REAL ESTATE TRANSFER ASSESSMENT DECLARATION FOR GUNNISON RISING (the "RETA Declaration"), is made as of this _____ day of _____, 2010, by **GUNNISON VALLEY PARTNERS, LLC**, a Colorado limited liability company (the "Declarant"), with the consent of the Consenting Owners.

ARTICLE 1

GENERAL

1.1 Property. Declarant and the Consenting Owners are the owners of those certain parcels of land in the County of Gunnison, State of Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by reference, which is defined in this RETA Declaration as the "Property." Declarant intends to develop the Property, including any property which may be annexed to the Property as provided herein, as a mixed planned community of residential, commercial, and governmental uses.

1.2 Purposes of RETA Declaration. Property that is subject to this RETA Declaration in the manner hereinafter provided shall be referred to as the "Property." This RETA Declaration is executed: (a) as a condition to the annexation of the Property to the City of Gunnison and (b) to provide a mechanism to finance various public improvements within the Property and in areas of the City of Gunnison that lie outside the Property in order to offset the costs of development of the Property and the impacts on the City of Gunnison and its residents.

1.3 RETA Declaration. Declarant, for itself, its successors and assigns, hereby declares that the entire Property and all other property which becomes subject to this RETA Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this RETA Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this RETA Declaration, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, and protection of the Property. The provisions of this RETA Declaration are intended to and shall run with the land and shall bind, be a charge upon, and inure to the mutual benefit of: (a) all of the property which is now or becomes part of the Property and each part or parcel thereof, (b) Declarant and its successors and assigns, (c) the City of Gunnison, and (d) all Persons having or acquiring any right, title or interest in any property which becomes part of the Property or any part or parcel thereof or any Improvement thereon and their heirs, personal representatives, successors and assigns. The provisions

of this RETA Declaration shall be binding on each current Owner of any portion of the Property and each subsequent purchaser or long-term lessee of any portion of the Property.

1.4 Applicability of Colorado Common Interest Ownership Act. The provisions of this RETA Declaration doe not constitute a common interest community as defined in Section 38-33.3-103(8), Colorado Revised Statutes, and, therefore, this RETA Declaration is not subject to the provisions of the Colorado Common Interest Ownership Act.

ARTICLE 2

DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this RETA Declaration shall have the meanings hereinafter specified.

2.1 Act. "Act" shall mean the Colorado Common Interest Ownership Act as provided in C.R.S. Section 38-33.3-101, et seq., as the same may be from time to time amended.

2.2 Annexation Agreement. "Annexation Agreement" shall mean the Annexation Agreement between the City and the Annexor recorded as an encumbrance against the Property.

2.3 Business Association. "Business Association" means any partnership, limited liability company, joint venture, or other entity.

2.4 City. "City" shall mean the City of Gunnison, Colorado.

2.5 Consenting Owner. "Consenting Owner" shall mean each person or entity which has executed this RETA Declaration except Declarant and Mortgagees.

2.6 Consideration. "Consideration" shall mean the total amount of money paid (or purchase price) and the fair market value of any property delivered, or contracted to be paid or delivered, in return for the transfer of title to any real property within the Property, and includes any money or property paid or delivered to obtain a contract right to purchase any real property within the Property, and the amount of any note, contract indebtedness (including, without limitation, obligations which could be characterized as contingent land gain), or rental payment reserved in connection with such transfer, whether or not secured by any lien, Deed of Trust, Mortgage, or other encumbrance, given to secure the transfer price, or any part thereof, or remaining unpaid on the property at the time of transfer, whether or not assumed by the transferee.

2.7 Declarant. "Declarant" shall mean Gunnison Valley Partners, LLC, a Colorado limited liability company, its successors and assigns. A Person shall be deemed to be a "successor and assign" of Gunnison Valley Partners, LLC, as Declarant, and a Successor Declarant only if specifically designated

in a duly Recorded instrument as a Successor Declarant under this RETA Declaration and shall be deemed a Successor Declarant only as to the particular rights or interests of Declarant under this RETA Declaration which are specifically designated in the written instrument. However, a successor to Gunnison Valley Partners, LLC by consolidation or merger shall automatically be deemed a successor or assign of Gunnison Valley Partners, LLC as Successor Declarant under this RETA Declaration.

2.8 Deed of Trust. "Deed of Trust" shall mean a Mortgage.

2.9 District. "District" shall mean one or more metropolitan districts or other type of special district organized pursuant to Title 32 of the Colorado Revised Statutes (or any successor statutes) for part or all of the Property.

2.10 Escrowed Assessments. "Escrowed Assessments" shall mean the portion of the Real Estate Transfer Assessments that would otherwise be paid to the City up to an amount equal to one and one-half times the City's share of the estimated costs of the design and construction of the Multimodal Improvements between Loveland and Adams streets and one and one-half times the costs of the design and construction of the Adams Entrance Improvements, as such terms are defined in the Annexation Agreement (which estimates are referred to herein as the "Escrow Amount"). The initial Real Estate Transfer Assessments paid under this RETA Declaration that would otherwise be paid to the City up to the Escrow Amount shall be deposited in escrow with an escrow agent mutually approved by the City and the Declarant pursuant to the Annexation Agreement and shall be used to pay the costs of the Multimodal Improvements between Loveland and Adams Streets and the Adams Entrance Improvements as provided in the Annexation Agreement and/or to reimburse Declarant for such costs pursuant to escrow instructions mutually approved by the City and the Annexor pursuant to the Annexation Agreement.

2.11 Mortgage. "Mortgage" shall mean any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Site, encumbering the Site to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage." "First Mortgage" shall mean a Mortgage which has priority over all other security interests in a Site, other than statutory liens for taxes and special assessments.

2.12 Mortgagee. "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee. "First Mortgagee" shall mean any Person named as the mortgagee or beneficiary under any First Mortgage, or any insurer or guarantor of a First Mortgage.

2.13 Mortgagor. "Mortgagor" shall mean the Person who mortgages his or its property to another (i.e., the maker or grantor of a Mortgage). The term "Mortgagor" shall include a trustor or grantor under a Deed of Trust.

2.14 Owner. "Owner" shall mean the Person, including Declarant and the Consenting Owners, or, if more than one, all Persons collectively, who hold fee simple title of Record to all or any portion of the Property.

2.15 Person. "Person" shall mean a natural person, a corporation, a Business Association, or any other entity.

2.16 Property. "Property" shall mean the real property which is subject to this RETA Declaration.

2.17 Real Estate Transfer Assessment. "Real Estate Transfer Assessment" shall mean a charge imposed at the time of any Transfer for value of all or any portion of the Property in an amount equal to one and one-half percent (1.5%) of the Consideration paid for the Property or any portion thereof, unless exempted hereunder.

2.18 Record or Recorded. "Record" or "Recorded" shall mean the filing for record of any document in the office of the Clerk and Recorder of the County of Gunnison, Colorado.

2.19 RETA Declaration. "RETA Declaration" shall mean this instrument as it may be amended from time to time.

2.20 Site. "Site" shall mean any real property within the Property capable of being owned separately from the rest of the Property, whether a subdivided lot, tract or unit, or a parcel of land described by metes and bounds legal description.

2.21 Transfer. "Transfer" shall mean, whether in one transaction or a series of related transactions, any conveyance, assignment, lease or other transfer of beneficial ownership or leasehold interest in the Property or any Site within the Property which is included in the following: (a) the conveyance of fee simple title to the Property or any Site within the Property, including any conveyance arising out of an installment land contract or a lease containing an option to purchase; (b) the transfer of more than 50% of the outstanding shares of voting stock of a corporation which owns the Property or one or more Sites within the Property; and (c) the transfer of more than 50% of the interest in profits or losses of any Business Association which owns the Property or one or more Sites within the Property. However, "Transfer" shall not include any exempt transaction as set forth in Section 3.2 below.

2.22 Transferee. "Transferee" shall mean the Person to whom any interest in the Property or a Site within the Property is Transferred, and each party included in the term "Transferee" shall have joint and several liability for all obligations of the Transferee under this RETA Declaration.

2.23 Transferor. "Transferor" shall mean the Person from whom any interest in the Property or a Site within the Property is Transferred.

ARTICLE 3

REAL ESTATE TRANSFER ASSESSMENT

All real property within the Property shall be held, used and enjoyed subject to the following limitations and restrictions:

3.1 Obligation and Lien for Assessment. Declarant, Consenting Owners and each subsequent Owner of all or any portion of the Property, by acceptance of a Deed to all or any portion of the Property or any other real property that is subsequently annexed to this RETA Declaration, hereby agree that a Real Estate Transfer Assessment equal to one and one-half percent of the Consideration paid for the Property or any portion thereof, except for the Escrowed Assessments, shall be paid to the City upon any Transfer for Consideration of the Property or any Site within the Property, other than Transfers that are exempted pursuant to Section 3.2 below. Declarant, Consenting Owners and each subsequent Owner of all or any portion of the Property, by acceptance of a Deed to all or any portion of the Property or any other real property that is subsequently annexed to this RETA Declaration, further agree that a Real Estate Transfer Assessment equal to one and one-half percent of the Consideration paid for the Property or any portion thereof also shall be paid to the District in which the portion of the Property is located upon any Transfer for Consideration of the Property or any Site within the Property, other than Transfers that are exempted pursuant to Section 3.2 below. The Transferee of the Property or any Site within the Property shall be obligated to pay the Real Estate Transfer Assessments at the closing of the transfer of the Property or Site. Such Real Estate Transfer Assessments, plus interest, cost of collection, and attorneys' fees incurred in connection with enforcement of a Transferee's obligation to pay the Real Estate Transfer Assessments, shall also be a continuing lien upon such Transferee's real property until paid in full. Such Real Estate Transfer Assessments, interest, cost of collection, and attorneys' fees shall also be the personal obligation of the Persons who were the Transferees of the Property or Site within the Property at the time the Real Estate Transfer Assessments were due and payable. The obligation to pay a Real Estate Transfer Assessment to a District shall terminate at such time as all indebtedness of such District has been repaid in full.

3.2 Exempt Transactions. The transfer of all or any portion of the Property or any other real property subsequently annexed to this RETA Declaration under any one of the following circumstances shall be exempt from payment of the Real Estate Transfer Assessments:

a. Recordation of a Deed of Trust or Mortgage or a release of a Deed of Trust or Mortgage or any other Transfer to secure a debt or other obligation or any release of a Site which is security for a debt or other obligation, including Transfers in connection with foreclosure of a Deed of Trust or Mortgage or Transfers in connection with a deed in lieu of foreclosure;

b. Any Transfer, whether outright or in trust, that is for the benefit of the Transferor or the Transferor's spouse, child, or other relative (which shall include all lineal descendants, including stepchildren, of any grandparent of the Transferor, and the spouses and stepchildren of the descendants), provided there is only nominal Consideration for the Transfer. For purposes of this exclusion, a distribution from a trust shall be treated as a Transfer made by the grantor(s) of the trust;

c. Any Transfer of a Site to the City, the State of Colorado or any agency or instrumentality thereof, the United States or any agency or instrumentality thereof, or any county, district or other political subdivision of the State of Colorado;

d. Any transfer of common elements (as defined in the Act) to an association which is part of a common interest community (as defined in the Act);

e. Any Transfer arising solely from the termination of a joint tenancy or the partition of real property held under common ownership, except to the extent that additional consideration is paid in connection therewith;

f. Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution;

g. Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a transfer previously Recorded, making minor boundary adjustments, removing clouds on title, or granting easements, rights-of-way, or licenses;

h. Any Transfer pursuant to a decree or order of a court of record in connection with a condemnation proceeding, including a deed in lieu of condemnation conveying a Site to a governmental agency;

i. Any Transfer pursuant to a decree or order of a court of record, other than in connection with a condemnation proceeding, where such decree or order does not include an obligation to pay Consideration to the Transferor (if the decree or order includes an obligation to pay Consideration to a Transferor, except in the case of a condemnation action, the Transferee under such decree or order shall be obligated to pay the Real Estate Transfer Assessment);

j. Any lease of the Property or any Site within the Property (or assignment or transfer of any interest in any such lease) for a period of less than thirty (30) years;

k. The subsequent Transfer of a Site in a "tax free" or "tax deferred" trade or exchange under the Internal Revenue Code wherein the interim owner acquires the Site for the sole

purpose of reselling that Site after the trade or exchange. In such a case, the first Transfer of title is subject to the Real Estate Transfer Assessment and subsequent Transfers will be exempt only as long as a Real Estate Transfer Assessment has been paid in connection with the first Transfer of title to such Site in such trade or exchange;

l. Any Transfer of a Site without consideration (other than a potential tax benefit) to an organization which is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended (or any comparable statute);

m. Any Transfer made by a corporation or other entity, for Consideration, to any other corporation or entity which owns one hundred percent of the Transferor's equity securities or equity interests;

n. Any Transfer from a partially-owned direct or indirect subsidiary corporation to its direct or indirect parent corporation, or between partially-owned subsidiaries of a common parent corporation, where Consideration is paid for, or in connection with such Transfer; however, unless such Transfer is otherwise exempt, this exemption shall apply only to the extent of the direct or indirect beneficial interest of the direct or indirect parent corporation in the Transferee immediately prior to the Transfer.

o. Any Transfer by a partner, member, or joint venturer in a Business Association to a Business Association in which the partner, member, or joint venturer holds an equity interest, or by a Business Association to any partner, member, or joint venturer owning an equity interest in such Business Association, where there is no Consideration for the Transfer other than issuance, cancellation, redemption, or surrender of the equity interest in the Business Association, as the case may be;

p. Any Transfer by a corporation to its shareholders, in connection with the liquidation of such corporation or other distribution of property or dividend in kind to shareholders, if the Site is transferred generally pro rata to its shareholders, and no consideration is paid other than the cancellation of such corporation's stock;

q. Any Transfer by a Business Association to its partners, members, or joint venturers in connection with the liquidation of such Business Association or other distribution of property or dividend in kind to partners, members, or joint venturers of such Business Association, if the Site is transferred generally pro rata to the partners, members, or joint venturers of such Business Association, and no consideration is paid other than the cancellation of the equity interest in such Business Association;

r. Any Transfer to a corporation or Business Association where such corporation or Business Association is owned in its entirety by the persons transferring the Property or the Site and such persons have the same relative interests in the transferee entity as they had in the Property or the

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Site immediately prior to such Transfer and no consideration is paid other than the issuance of each such persons' respective stock or other ownership interest in the Transferee; or

s. Any Transfer by any person(s) or entity(ies), whether in a single transaction or a series of transactions, where the Transferor(s) and Transferee(s) are and remain under common ownership and control, there is no Consideration other than the issuance, cancellation, or surrender of stock or other ownership interest(s) in the Transferor(s) or Transferee(s), and such Transfer or Transfers are for a valid business purpose and not for the purpose of avoiding payment of the Real Estate Transfer Assessment.

3.3 City Review of Exemptions. If a Transfer occurs under circumstances where the Transferor and Transferee believe the Transfer is exempt under Section 3.2 above, the Transfer may occur without payment of the Real Estate Transfer Assessments and the City may request documentation of the basis for the exemption from the Transferor and Transferee. If the City believes that the Transfer should not be exempt from payment of the Real Estate Transfer Assessment, the City shall provide written notice of such determination to the Transferor and the Transferee at the addresses shown on the deed transferring the Site. If the Transferor and/or the Transferee contest the City's determination in a written notice provided to the City within sixty (60) days after the date of the City's notice of determination, the City shall schedule a hearing before the City Council at which hearing the Transferor and the Transferee shall be entitled to present evidence and witnesses in support of the claim of exemption. If the City Council determines that the exemption is valid, no Real Estate Transfer Assessment shall be due. If the City Council determines that the exemption is not valid, the Real Estate Transfer Assessments shall be paid within thirty (30) days after the City Council provides written notice of such determination to the Transferor and Transferee. The Transferee may appeal the City Council determination to the District Court for the County of Gunnison, State of Colorado, where the court shall review the City Council determination based on the evidence presented at the City Council hearing.

3.4 Interest. If any Real Estate Transfer Assessment is not paid within ten (10) days after it is due, the Real Estate Transfer Assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum until paid in full.

3.5 Attribution of Payments. All payments made pursuant to this RETA Declaration shall be credited first to interest, next to attorneys' fees and other costs of collection, and then to the amount of the Real Estate Transfer Assessments due and owing.

3.6 Notice of Default and Collection of Assessments. If any Real Estate Transfer Assessment and accrued interest, if any, is not paid within thirty (30) days after its due date, the City shall mail a notice of default ("Notice of Default") to the Transferee and to each Mortgagee of the Site for which the Real Estate Transfer Assessment has not been paid. The notice shall specify: (a) the fact that the Real Estate Transfer Assessment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is mailed to the Transferee and Mortgagee(s), by which such default must be cured; and (d) a statement that failure to cure the default

on or before the date specified in the notice may result in legal action by the City or a District to collect the Real Estate Transfer Assessment. If the delinquent Real Estate Transfer Assessment and any legal fees or interest thereon are not paid in full on or before the date specified in the notice, the City and/or a District, at their option, may enforce the collection of the Real Estate Transfer Assessment and all charges and interest thereon in the manner set forth below.

3.7 Remedies to Enforce Assessments. Each Real Estate Transfer Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Transferee against whom the same is assessed. In the event of a default in payment of any Real Estate Transfer Assessment, the City and/or a District may, in addition to any other remedies provided under this RETA Declaration or by law, enforce such obligation by suit or by filing and foreclosure of a lien as hereinafter provided.

3.8 Lawsuit to Enforce Assessments. The City and/or a District may bring an action at law against a Transferee to enforce any Real Estate Transfer Assessment obligation. Each Mortgagee of the Site with respect to which the Real Estate Transfer Assessment was not paid shall be named as a defendant in such action. Any judgment rendered in such action shall include any interest and costs of enforcement, including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Transferee.

3.9 Lien to Enforce Assessments. All Real Estate Transfer Assessments due and payable in connection with the Transfer of the Property or a Site (including interest, cost of collection and attorneys' fees) shall constitute a lien on the Property or such Site effective immediately upon the Recordation of a deed or other instrument of Transfer and shall be superior to all other liens and encumbrances, except: (a) tax and special assessment liens in favor of any assessing authority; (b) liens and encumbrances Recorded prior to recordation of this RETA Declaration; and (c) all sums unpaid under a Mortgage encumbering a Site ("First Mortgage") that has first priority over any other Mortgage encumbering such Site to the extent the Real Estate Transfer Assessment became due and payable upon a subsequent transfer of a Site after the First Mortgage on such Site is Recorded. By acceptance of a deed for a Site, the Transferee or Transferees agree that the Real Estate Transfer Assessment lien shall be prior to any homestead exemption or right and irrevocably waive any and all rights they may have to claim a homestead exemption against enforcement of the Real Estate Transfer Assessment lien.

The recording of this RETA Declaration constitutes record notice and perfection of the Real Estate Transfer Assessment lien. No further recordation of any claim of lien or Real Estate Transfer Assessment is required. However, to evidence such lien, the City and/or a District may Record a written notice setting forth the amount of such unpaid Real Estate Transfer Assessment, the name of the Transferee of the Site and the legal description of the Site. The recording of a notice of lien shall not be a condition precedent to nor delay the attachment of a lien which shall attach as of the first day on which any Real Estate Transfer Assessment is due and payable. Such lien may be enforced by foreclosure on the defaulting Owner's Site by the City and/or a District in the same manner as a mortgage on real property and shall encumber all rents and profits issuing from the Site, which lien on rents and profits shall be subordinate to the matters described in subsections (a), (b), and (c) above.

105

The City and/or a District shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the Site.

ARTICLE 4

MISCELLANEOUS

4.1 Term of RETA Declaration. Unless amended as herein provided, each provision contained in this RETA Declaration shall continue and remain in full force and effect for a period of forty (40) years after the date this RETA Declaration is Recorded, and thereafter shall be automatically extended for successive periods of ten (10) years each unless terminated by the written consent of the City, acting by and through its City Council, and the Declarant (unless the Declarant or a Successor Declarant no longer owns any portion of the Property, in which case by the Owners of at least fifty-one percent (51%) of the land area within the Property). In the event this RETA Declaration is terminated, the termination of this RETA Declaration shall be evidenced by a termination agreement ("Termination Agreement"), or ratification thereof, executed by the City and by the Declarant or the requisite number of Owners, whichever is applicable. The Termination Agreement shall specify a date after which the Termination Agreement will be void unless Recorded before such date. The Termination Agreement shall be Recorded and the termination of this RETA Declaration shall be effective upon such Recording.

4.2 Amendment of RETA Declaration. Any provisions, covenant, condition, restriction, or equitable servitude contained in this RETA Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Declarant (or, if Declarant or a Successor Declarant no longer owns any land within the Property, in which case by the Owners of at least fifty-one percent (51%) of the land area within the Property) and the City, acting by and through its City Council. The amendment or repeal shall be effective upon the Recordation of a certificate, executed by the Mayor and City Clerk of the City and the Declarant (or, if Declarant or a Successor Declarant no longer owns any land within the Property, by the Owners of at least fifty-one percent (51%) of the land area within the Property), setting forth the amendment or repeal in full. Any Amendment to the RETA Declaration made hereunder shall be effective only when Recorded.

4.3 Priority of First Mortgage Over Assessments. Each First Mortgagee of a Mortgage encumbering a Site who obtains title to such Site pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure shall take title to the Site free and clear of any claims for unpaid Real Estate Transfer Assessments against such Site which accrued after the date on which the Mortgage was Recorded.

4.4 Notices. Any notice permitted or required to be given under this RETA Declaration shall be in writing and may be given either personally or by mail. If served by mail, each notice shall be sent postage prepaid, certified mail, return receipt requested, addressed to any Person at the address for such Person on the deed or other instrument Transferring a Site to or from such Person, or to the Site of such Person if no address is set forth on the deed or other instrument of conveyance, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the fifth business day after it is deposited in a regular depository of the United States Postal Service.

4.5 Costs and Attorneys' Fees. In any action or proceeding under this RETA Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorneys' fees.

4.6 Governing Law; Venue. This RETA Declaration shall be construed and governed under the laws of the State of Colorado. Venue for any action related to this RETA Declaration shall be in the District Court for the County of Gunnison, State of Colorado.

4.7 Severability. Each of the provisions of this RETA Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

4.8 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

4.9 Captions for Convenience. The titles, headings, and captions used in this RETA Declaration are intended solely for convenience of reference and shall not be construed in construing any of the provisions of this RETA Declaration.

IN WITNESS WHEREOF, Declarant has executed this RETA Declaration the day and year first above written.

Signature of Declarant: Name: **Gunnison Valley Partners, LLC**, a Colorado limited liability company

By: SCHUCK GUNNISON LLLP, a Colorado limited liability limited partnership,

Its: Managing Member

By: Schuck Colorado Ltd., a Colorado corporation

Its: General Partner

By: _____

Name: _____

Its: _____

Date: _____, 2010

Mailing Address of Declarant: 2 North Cascade Avenue, Suite 1280 Colorado Springs, CO 90903

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing Real Estate Transfer Assessment Declaration was acknowledged before me this _____ day of _____, 2010, by _____ as _____ of Schuck Colorado Ltd., a Colorado corporation, General Partner of Schuck Gunnison LLLP, a Colorado limited liability limited partnership, Managing Member of **Gunnison Valley Partners, LLC, a Colorado limited liability company,** as Declarant.

WITNESS my hand and official seal.

My commission expires: _____

_____

Notary Public

Signature of Consenting Owner:

Name: **Donna R. Bratton**

_____

(Signature)

Date: _____, 2010

Mailing Address of Consenting Owner: P.O. Box 856

Gunnison, CO 81230

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing Real Estate Transfer Assessment Declaration was acknowledged before me this _____ day of _____, 2010, by **Donna R. Bratton,** as a Consenting Owner.

WITNESS my hand and official seal.

My commission expires: _____

_____

Notary Public

ND

Signature of Consenting Owner:

Name: **GUNNISON GATEWAY, LLC**, a Colorado limited liability company

By: _____

Rufus O. Wilderson

Title: _____

Date: _____, 2010

Mailing Address of Consenting Owner: P.O. Box 370

Gunnison, CO 81230

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing Real Estate Transfer Assessment Declaration was acknowledged before me on the _____ day of _____, 2010, by Rufus O. Wilderson, on behalf of **GUNNISON GATEWAY, LLC,** a Colorado limited liability company, as a Consenting Owner.

WITNESS my hand and official seal.

My commission expires: _____

_____

Notary Public

The City of Gunnison, a municipal corporation, hereby acknowledges that the foregoing Real Estate Transfer Assessment Declaration for Gunnison Rising was approved by the City Council of the City of Gunnison on _____, 2010.

CITY:

CITY OF GUNNISON, COLORADO, a municipal corporation

ATTEST:

_____

_____, City Clerk

By: _____

_____, Mayor

APPROVED AS TO FORM:

GUNNISON CITY ATTORNEY'S OFFICE

By: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing Real Estate Transfer Assessment Declaration was acknowledged before me this ____ day of _____, 2010 by _____, as Mayor of the **CITY OF GUNNISON, COLORADO,** a municipal corporation, and attested to by _____, City Clerk.

WITNESS my hand and official seal.

My commission expires:_____

_____

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

OF

PROPERTY

A tract of land situated in Section 1, Township 49 North, Range 1 West, Section 36, Township 50 North, Range 1 West, Sections 5 & 6, Township 49 North and Sections 30 & 31, Township 50 North, Range 1 East, New Mexico Principal Meridian, Gunnison County, State of Colorado, more particularly described as follows:

Beginning at the E¼ corner of said Section 31; Thence S 00°23'38" W 1324.57 Ft. to the Southeast corner of the NE¼SE¼ of said Section 31; Thence S 89°43'41" W 1339.66 Ft. to the Southwest corner of the NE¼SE¼ of said Section 31; Thence S 00°06'24" W 1364.37 Ft. to the South Right-of-Way of U.S. Highway 50; Thence N 89°47'13" E 1335.75 Ft. along said South Right-of-Way; Thence N 89°46'08"E 2629.52 Ft. along said South Right-of-Way to a curve; Thence 568.43 Ft. along the arc of a curve to the right along said South Right-of-Way having a radius of 1382.50 Ft., a central angle of 23°33'29" and a chord of S 80°51'50" E 564.44 Ft. to a reverse curve; Thence 897.91 Ft. along the arc of a curve to the left along said South Right-of-Way having a radius of 1005.00 Ft., a central angle of 51°11'25" and a chord of S 83°46'55" E 868.34 Ft. to a compound curve; Thence 278.27 Ft. along the arc of a curve to the left along said South Right-of-Way having a radius of 1980.00 Ft. a central angle of 08°03'09" and a chord of N 83°10'10" E 278.04 Ft.; Thence S 67°42'16" W 53.30 Ft.; Thence S 40°54'57" W 145.71 Ft.; Thence S 23°32'39" W 126.67 Ft.; Thence S 04°53'25" E 223.24 Ft.; Thence S 03°24'52" W 398.71 Ft.; Thence S 85°33'42" W 700.92 Ft.; Thence N 66°21'06" W 93.44 Ft.; Thence N 58°06'04" W 191.98 Ft.; Thence S 68°05'02" W 44.26 Ft.; Thence N 85°52'10" W 94.86 Ft.; Thence N 48°17'08" W 297.80 Ft.; Thence S 89°20'32" W 198.37 Ft.; Thence S 57°04'57" W 163.61 Ft.; Thence S 31°48'25" W 68.93 Ft.; Thence N 74°42'38" W 467.51 Ft.; Thence S 73°08'43" W 414.66 Ft.; Thence N 60°44'16" W 376.57 Ft.; Thence S 85°00'41" W 740.78 Ft.; Thence S 86°55'49" W 1238.95 Ft.; Thence S 86°09'44" W 1447.72 Ft.; Thence S 07°27'36" W 470.05 Ft.; Thence S 61°10'21" W 472.51 Ft.; Thence N 01°10'36" W 365.64 Ft.; Thence S 89°09'54" W 766.41 Ft. along the North line of the SE¼NW¼ of said Section 6 to a Point on the East boundary of the Gunnison County Airport Property Conveyed to Gunnison County by court order, recorded May 29, 2002 at reception number 520716; Thence N 16°24'30" W 946.95 Ft. along said Airport Boundary; Thence S 73°35'30" W 2887.24 Ft. along said Airport Boundary to the West line of Government Lot 1 of said Section 1; Thence N 00°08'15" W 637.48 Ft. along the West line of Government Lot 1 of said Section 1 to the Southerly line of the Pioneer Society Addition to the City of Gunnison; Thence N 59°40'00" E 992.74 Ft. along said Addition to the South Right-of-Way of U.S. Highway 50; Thence N 89°45'50" E 31.74 Ft. along said South Right-of-Way; Thence N 00°14'10" W 10.00 Ft. along said South Right-of-Way; Thence N 89°45'50" E 422.59 Ft. along said South Right-of-Way; Thence N 00°19'28" E 199.26 Ft. to the South line of the Wilson Subdivision; Thence N 89°44'13" E 298.29 Ft. to the Southeast corner of said Subdivision; Thence N 00°24'42" E 749.87 Ft. to the Northeast corner of said Subdivision; Thence S 90°00'00" W 665.54 Ft. to the Northwest corner of said Subdivision; Thence N 00°20'16" E 160.44 Ft. to the North line of the Western State College tract of land described in Book 592 Page 374, Gunnison County Records; Thence S 89°59'20" W 354.96 Ft. to the Northwest corner of said tract

of land; Thence N 00°20'16" E 573.73 Ft. to the Northwest corner of the E½S½S½NE¼SE¼ of said Section 36; Thence N 89°59'34" E 723.64 Ft. to the East line of said Section 36; Thence N 00°25'34" E 998.76 Ft. to the East ¼ corner of said Section 36; Thence N 00°16'22 W 1408.93 Ft. to a point on the West line of Section 31; Thence S 53°25'47" E 1135.40 Ft.; Thence S 89°58'56" E 366.73 Ft.; Thence N 00°33'12" W 1911.81 Ft. to the Southwest corner of the SE1/4SW1/4 of Section 31; Thence N 22°23'07" E 572.25 Ft.; Thence S 88°48'33" E 267.61 Ft.; Thence S 21°46'27" E 386.90 Ft.; Thence S10°59'31" E 483.90 Ft.; Thence S 29°21'37" E 1146.79 Ft. to the Northeast corner of the SE1/4NW1/4 of Section 31; Thence N 89°39'15" E 820.64 Ft.; Thence S 35°58'54" E 582.64 Ft.; N 89°39'15" E 536.57 Ft.; Thence S 35°50'18" E 1042.33 Ft.; Thence N 89°41'54"E 272.84 Ft. to the Point of Beginning containing 633.024 Acres, more or less.

Basis of bearings is the North line of said Section 6 being S 89°46'00' W according to the U.S.G.L.O. Plat of Township 49 North, Range 1 East, N.M.P.M.

EXHIBIT I

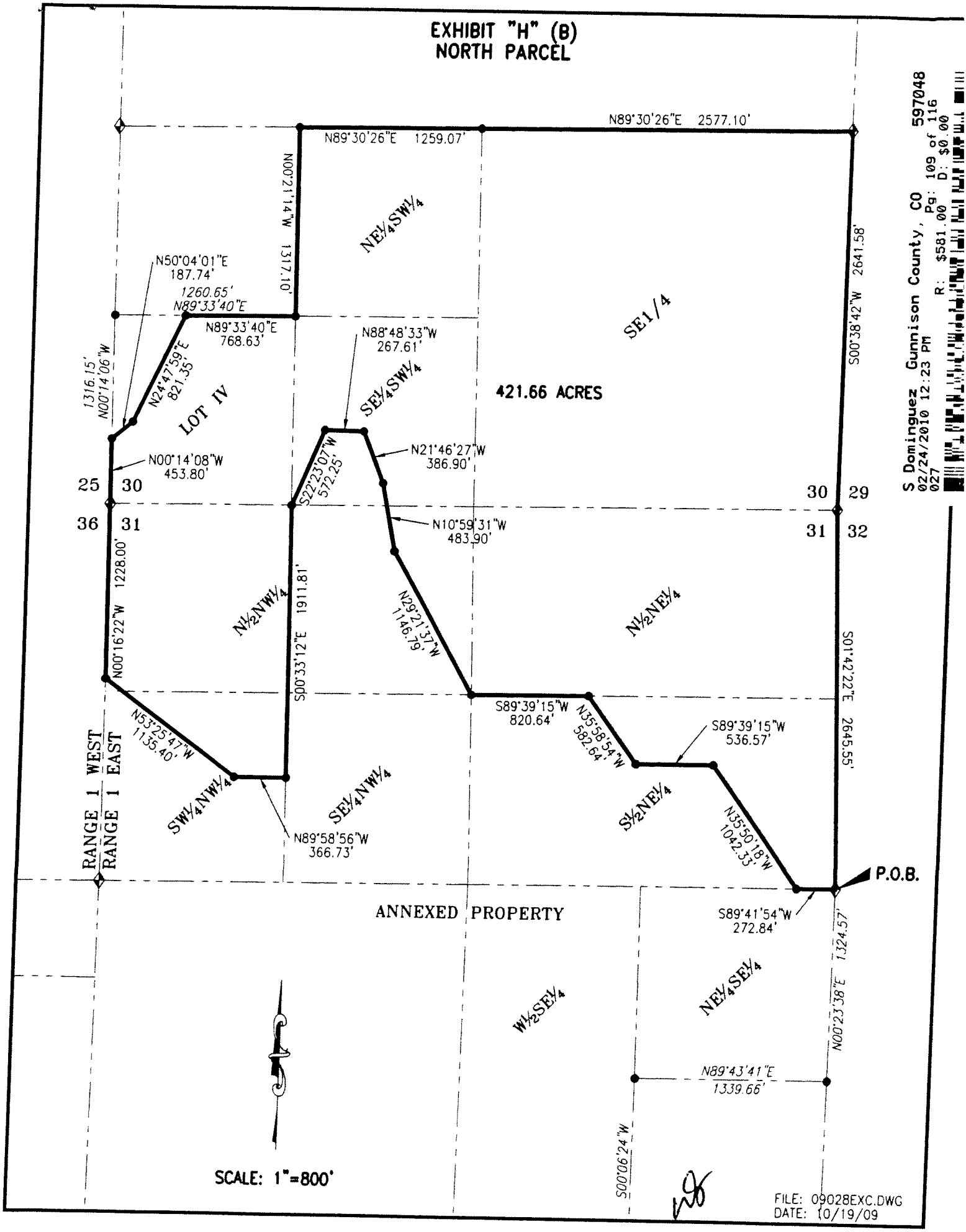
NORTH PARCEL LEGAL DESCRIPTION

A tract of land situated in Sections 30 & 31, Township 50 North, Range 1 East, New Mexico Principal Meridian, Gunnison County, State of Colorado, more particularly described as follows:

Beginning at the E¼ corner of said Section 31; Thence S 89°41'54"W 272.84 Ft.; Thence N 35°50'18" W 1042.33 Ft.; Thence S 89°39'15" W 536.57 Ft.; Thence N 35°58'54" W 582.64 Ft.; Thence S 89°39'15" W 820.64 Ft. to the Center North 1/16 corner of Section 31; Thence N 29°21'37" W 1146.79 Ft.; Thence N 10°59'31" W 483.90 Ft.; Thence N 21°46'27" W 386.90 Ft.; Thence N 88°48'33" W 267.61 Ft.; Thence S 22°23'07" W 572.25 Ft. to the West 1/16 corner of Section 31; Thence S 00°33'12" E 1911.81 Ft.; Thence N 89°58'56" W 366.73 Ft.; Thence N 53°25'47" W 1135.40 Ft. to a point on the West line of the NW1/4 said Section 31; Thence N 00°16'22W 1227.99 Ft. to the Northwest corner of said Section 31; Thence N 00°14'06" W 453.80 Ft. to the Southwest corner of a tract of land described under Reception No. 481994, Gunnison County Records; Thence N 50°04'01" E 187.74 Ft. along the East line of said tract of land; Thence N 24°47'59" E 821.35 Ft. along the East line of said tract of land to the North line of Government Lot 4 of said Section 30; Thence N 89°33'40" E 768.62 Ft to the Southwest corner of the NE¼SW¼ of said Section 30; Thence N 00°21'14" W 1317.10 Ft. to the Northwest corner of said NE¼SW¼; Thence N 89°30'26" E 1259.07 Ft. to the Northeast corner of said NE¼SW¼; Thence N 89°30'26" E 2577.10 Ft. to the Northeast corner of the SE¼ of said Section 30; Thence S 00°38'42" W 2641.58 Ft. to the Southeast corner of said SE1/4; thence S 01°42'22" E 2645.55 Ft. to the Point of Beginning containing 421.66 Acres, more or less.

Basis of bearings is the South line of said Section 31 being S 89°46'00' W according to the U.S.G.L.O. Plat of Township 50 North, Range 1 East, N.M.P.M.

EXHIBIT "H" (B)
NORTH PARCEL



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027 R: $581.00 D: $0.00

EXHIBIT J

AVIGATION EASEMENT

EXPRESS GRANT OF AN AVIGATION EASEMENT AND RIGHT OF WAY

WHEREAS, GUNNISON VALLEY PARTNERS, LLC, a Colorado limited liability company, whose address is 2 North Cascade Avenue, Suite 1280, Colorado Springs, Colorado 80903, and **DONNA R. BRATTON,** whose address is P.O. Box 856, Gunnison, Colorado 81230, hereinafter collectively called the "Grantors", are the owners in fee of that certain parcel of land situated in the City of Gunnison, County of Gunnison, State of Colorado, more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by this reference,

hereinafter called "Grantors' Property" and outlined in the attached map (Exhibit B).

NOW, THEREFORE, in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantors, for themselves, their heirs, administrators, executors, successors and assigns, do hereby grant, bargain, sell and convey unto **BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO,** hereinafter called the "Grantee," its successors and assigns, for the use and benefit of the public an easement and right of way, for a right of flight for the passage of aircraft in and through the Airspace (as defined below) above the surface of the Grantors' Property, together with the right to cause in said Airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said Airspace, and for the use of said Airspace in connection with landing on, taking off from, or operating on the Gunnison/Crested Butte Regional Airport, hereinafter called the "Airport." The foregoing easement and right of way is subject to all of the following terms and conditions:

(1) This is a permanent and non-exclusive easement for the free and unobstructed use and passage of all types of aircraft in and through the Airspace over the Grantors' Property, with such use and passage to be unlimited as to frequency, type of aircraft, and proximity. Grantor furthermore waives all damages and claims for damages against the Airport and the Grantee caused or alleged to be caused by or incidental to such activities.

(2) As used herein, the term "aircraft" shall mean any and all types of aircraft that may utilize the Airport, whether now in existence or hereafter manufactured and developed, and shall include, but is not limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.

(3) The Grantors expressly agree for themselves, their successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Grantors' Property above the approach surface for the Airport as defined by the Federal Aviation

Administration, hereinafter the "FAA," as of the date of this Easement (referred to herein as the "Airspace"). The FAA map defining the Airspace is attached hereto as "Exhibit C."

(4) The easement and right-of-way created hereby grants to the Grantee the continuing right to prevent the erection or growth upon Grantors' Property of any building, structure, tree, or other object that extends into the Airspace above Grantor's Property. The easement and right-of-way created hereby grants to the Grantee a right of ingress to, egress from and passage over Grantors' Property to remove the offending structure or object, and to cut the offending growth, all at the expense of the Grantor, in the event the aforesaid covenant is breached, subject to Grantee's obligation to first provide written notice of the alleged breach of this easement to Grantor. If Grantor fails to correct the alleged breach within fifteen (15) days after receipt of Grantee's notice or such longer period of time as may be reasonably required to correct the alleged breach, Grantee may obtain a court order from the District Court for the 7th Judicial District of Colorado authorizing Grantee to remove or cut the offending structure, object or growth. Grantee shall have a continuing obligation to restore to its previous condition any portion of the Grantors' Property and any improvements located thereon that may be damaged in the course of such entry and exercise of any rights of Grantee under this Easement, other than any improvements or other objects that encroached upon the Airspace.

(5) Said easement and burden, together with all things which may be alleged to be incident to or resulting from the use and enjoyment of said easement, including but not limited to the right to cause in all Airspace above the surface of Grantors' Property such noise, vibrations, fume, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft), fear, interference with sleep and communications and any and all other effects that may be alleged to be incident to or caused by the operation of aircraft within the Airspace over Grantor's Property or at an elevation above the ground equal to the elevation of the Airspace in the vicinity of Grantors' Property or in landing at or taking off from or operating at or on the Airport is hereby granted.

(6) Except as provided in Paragraph (7) below, Grantors do hereby fully waive, remise, and release any right or cause of action which they may now have or which they may have in the future against Grantee, its successor and assigns, due to such noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on the Airport.

(7) Notwithstanding any other provision hereof to the contrary, this grant of easement shall not operate to deprive the Grantors, their successors or assigns, of any rights or causes of action that it may otherwise have from time to time against any individual or entity for negligent or unlawful operation of aircraft, except that nothing in this easement is or shall be construed to be a waiver by Grantee, its officials, employees, or agents, of governmental immunity except to the extent waived pursuant to the Colorado Governmental Immunity Act, Colorado Revised Statutes Sections 24-10-101, et seq.

TO HAVE AND TO HOLD said easement and right-of-way, and all rights pertaining thereto unto the Grantee, its successors, and assigns, until the Airport shall be abandoned and shall cease to be used for public airport purposes. It being understood and agreed that the aforesaid covenants and agreements shall run with the

land and shall be forever binding upon the heirs, administrators, executors, successors and assigns of the Grantor until the Airport shall be abandoned and cease to be used for public airport purposes.

GRANTOR:

GUNNISON VALLEY PARTNERS, LLC, a Colorado limited liability company

By: SCHUCK GUNNISON, LLLP, a Colorado limited liability limited partnership
Its: Managing Member

By: SCHUCK COLORADO LTD., a Colorado corporation, its General Partner

By: _____
William D. Schuck, President

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing Easement was executed before me this _____ day of _____, 2010, by William D. Schuck as President of Schuck Colorado Ltd., the General Partner of Schuck Gunnison, LLLP, the Managing Partner of and on behalf of **GUNNISON VALLEY PARTNERS, LLC**, as Grantor.

Witness my official hand and seal.

My commission expires: _____

_____
Notary Public

_____
DONNA R. BRATTON

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Easement was executed before me this _____ day of _____, 2010, by **DONNA R. BRATTON,** as Grantor.

Witness my official hand and seal.

My commission expires:_____

_____
Notary Public

EXHIBIT A

TO

EXPRESS GRANT OF AN AVIGATION EASEMENT AND RIGHT OF WAY

DESCRIPTION OF GRANTOR'S PROPERTY

EXHIBIT B

TO

EXPRESS GRANT OF AN AVIGATION EASEMENT AND RIGHT OF WAY

MAP OF GRANTOR'S PROPERTY

EXHIBIT C

TO

EXPRESS GRANT OF AN AVIGATION EASEMENT AND RIGHT OF WAY

FAA MAP