Planning and Development Services

City of Aurora

Planning Division
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Aurora, Colorado 80012
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June 27, 2023

Brian Alpert
Murphy Creek Development, Inc.
30 Cherry Hills Farm Dr
Englewood, CO 80110

Re: **Second Submission Review –** Murphy Creek GDP Amendment No 3 – GDP Amendment
Application Number: **DA-1250-57**
Case Numbers: **1995 2002 11; 2022 8007 00**

Dear Mr. Alpert:

Thank you for your second submission, which we started to process on Wednesday, June 7, 2022. We have reviewed your plans and attached our comments along with this cover letter. The first section of our review highlights our major comments. The following sections contain more specific comments, including those received from other city departments and community members.

Since several important issues remain, you will need to make another submission. Please revise your previous work and send us a new submission on or before Friday, July 21, 2023. Note that all our comments are numbered. When you resubmit, include a cover letter specifically responding to each item. The Planning Department reserves the right to reject any resubmissions that fail to address these items. If you have made any other changes to your documents other than those requested, be sure to also specifically list them in your letter.

Your estimated Planning and Zoning Commission public hearing date will be given following the third review. Please remember that all abutter notices for public hearings must be sent and the site notices must be posted at least 10 days prior to the hearing date. These notifications are your responsibility, and the lack of proper notification will cause the public hearing date to be postponed. It is important that you obtain an updated list of adjacent property owners from the county before the notices are sent out. Take all necessary steps to ensure an accurate list is obtained.

As always, if you have any comments or concerns, please let me know. I may be reached at (303) 739-7259 or amuca@auroragov.org.

Sincerely,

Ariana Muca, PLA
Planner II

cc: Karen Henry Henry Design Group Inc 1501 Wazee Street, #1 c Denver, CO 80202
Ariana Muca, Case Manager
Scott Campbell, Neighborhood Services
Cesarina Dancy, ODA
Filed: K:\$DA\1250 57rev2.rtf

Second Submission Review

SUMMARY OF KEY COMMENTS FROM ALL DEPARTMENTS

- A 30-acre buffer along the portions PA-25 and PA-27 must remain (Planning).
- Pros has several comments regarding land use designation, form J and floodplains (PROS)
- Several reviews are experiencing confusion with the various roadway sections. Roadway sections must match across all documents.
- There is a potential conflict with the roadway sections and current PW standards. Staff suggests a meeting with Traffic, Public Works, and Planning to nail down the desired section updates.
- Per Section 4.04.2.01.2 of the roadway manual, local type 2 road is not appropriate for streets that connect to a collector or arterial roadways or service more than 40 homes (Public Works).
- Mile High, CDOT, and Arapahoe County have provided second review comments expressing various concerns.

PLANNING DEPARTMENT COMMENTS

1. Community Questions, Comments, and Concerns

1A. No citizen comments were received upon the first submittal.

2. Completeness and Clarity of the GDP Amendment

2A. Please see the site plan edit to update the cover sheet. The cover sheet will replace the current GDP cover sheet and needs owners, consultants, various amendments, and specific titles. These minor comments have been added to the site plan set.

2B. Each page of the original GDP sheet set being impacted must be included in the amendment. These sheets will need to be added to the overall GDP set. Please eliminate page numbers until the application is ready for mylar recordation.

2C. Repeat Comment: Please include and update page 11 of 18 of the current GDP. The PIP has various roadway descriptions that differ from the GDP. Section cuts need to be updated and added to the Murphy Creek GDP. The connecting text on the current GDP conflicts with the roadway section update. Staff cannot record conflicting information. Furthermore, page 12 of 18 also has roadway sections that will need to be amended, even if it is to simply remove the current roadway sections.

3.Architectural and Urban Design Issues

3A. There are several land use tables within the submitted amendment. This needs to be consolidated into one land use table. This land use table must match the PIP and Traffic Study.

3B. Previous comments regarding the Neighborhood Park to the West of Trib 4000 E remain. The topography in this area is not conducive to a well-sized usable park which is required per the GDP. Neighborhood parks should be highly amenitized and programmed spaces that serve the larger neighborhood. They should not be remnant spaces left over from developable areas. Land north of Yale Avenue is more suitable for the required use.

3C. As an advisory comment Parcel 25 is designated multi-family and a private or public park is to be located on the site as well. Multi-family is required to provide 20% outdoor space. Staff would like to confirm that this will be an additional private or public park amenity area outside of that code requirement. This does not need to be shown in the GDP pdf but confirmed through response to comment.

3D. Reviewing the changes in the GDP, there is an overall increase to the south in units. The area of increase is within high-density multi-family in parcels 24 through 27. The original GDP had 258 units per acre south of Yale Avenue. The amendment shows 325 units south of Yale Avenue. The proposal shifts higher density closer to an area of concern near Lowry Landfill. Higher density should support neighborhood parks, open space, and commercial. If pursuing higher density, it is recommended to look north of the Yale Alignment. Staff does not want an increase in density to the south of Yale Avenue.

4. PIP

4A. More of a question - in the original submission, there were 7 road sections provided. The second submission had 5. The original GDP has 9. In response to the comment, please explain which streets are being modified, no change, and deleted.

5. Environmental

5A. Murphy Creek citizens are concerned with Lowry Landfill and the development's proximity to the plume. South of Yale has been designated Parks and Open Space, and moving to high-density residential has concerns for staff due to the proximity to the Lowry Landfill Superfund Site. Both City and County Planners echo this concern. The County has consistently given comments regarding this concern during both submittals.

5B. In the response to the first review comments, the applicant did not provide any insight on how the active wells will be navigated. Developing around these wells could impact future projects. No environmental protection plan was included in the GDP Amendment's second submission though it was requested. When the Murphy Creek GDP was approved in 1995 the Lowry Landfill was a large point of discussion for staff, planning commission and City Council. An environmental protection plan should be included as part of the introduction letter.

5C. In reviewing the original case file, the Murphy Creek GDP was presented to the council with an agreed 30-acre park adjacent to Yale to buffer the lowry landfill was in the formal agreement and part of the city council discussion. The 30-acre buffer along the portions PA-25 and PA-27 must remain. This agreement was signed by Michael A Sheldon 1995. Staff can provide the case file upon request.

REFERRAL COMMENTS FROM OTHER DEPARTMENTS AND AGENCIES

6.Civil Engineering (Kristin Tanabe / 303-739-7306 / ktanabe@auroragov.org / Comments in green)

Murphy Creek GDP

6A. Appears E. Baltic Place should be 80' from typical section. Please clarify (ALL).

6B. Appears S. Old Tom Morris Rd. should be 80' from typical section. Please clarify (ALL).

6C. Small text updates and edits.

6D. Add Typical section for S. Old Tom Morris Rd.

6E. Add Typical section for E. Baltic Pl. from S. Gun Club Rd. to S. Addison St. (two options - 1. Could do two different ROW widths for this section, or 2. Could remove parking if want to maintain ROW with the dual turn lanes).

6F. Coordinate with Traffic regarding Bike Lane removal from roadway to wider bike/pedestrian walk. Updated 2023 roadway manual indicates bike lanes are not desired on arterials.

6G. Please update label if this will match the roadways shown on the typical sections in the public improvement plan.

6H. As shown in the typical sections in the PIP exhibits and on the GDP, the 70' trail corridor does not start on the edge of the 80' ROW. Please revise statement in PIP narrative or exhibits.

6I. As shown in the typical sections in the PIP exhibits and on the GDP, the 70' trail corridor does not start on the edge of the 114' ROW(?). Please revise statement in PIP narrative or exhibits.

PIP

6J. Repeat comment: This document needs to include ALL of the planning areas in the development (even those that haven't changed) and indicate what has changed from the previously approved document. The PIP needs to be an overall single document to be referenced and not multiple documents as amendments happen.

6K. Add and any partially constructed or dead-end roads need an adequate turnaround on page 4.

6L. Add the following statement:
"Any improvement identified in this document to be a responsibility of MARIA, are the responsibility of the Master developer. At the time when the project is constructed, if the master plan has not yet been incorporated into MARIA, and MARIA has not accepted the responsibility of said improvements, then it is the responsibility of this development."

6M. Suggested to break Phase 1 down to support specific planning areas. As written, all roadways and supporting infrastructure would need to be constructed before the first building permit is issued.
6N. Please verify and revise if it crosses E Baltic Place and is also on the south side of E Baltic Place.
6O. As shown in the typical sections in the PIP exhibits and on the GDP, the 70' trail corridor does not start on the edge of the 80' ROW. Please revise statement or exhibits.
6P. 114' ROW per PIP exhibits and GDP, please check and update accordingly.
6Q. As shown in the typical sections in the PIP exhibits and on the GDP, the 70' trail corridor does not start on the edge of the 114' ROW(?). Please revise statement or exhibits.
6R. What/where is tributary 4000E? Please label on all exhibits.
6S. Please extend regional trail in exhibits to match the narrative. (ALL)
6T. Does Flatrock have a space between Flat and Rock? Be consistent with spelling of roadway names in narrative and exhibits (ALL).
6U. Revised letter of introduction states that Yale will remain in its original alignment, please remove all references to realignment in this document.
6V. S. (be consistent to provide before roadway names, ALL).
6W. 70' ROW? Update typ. section label if necessary.
6X. 68' ROW? Update typ. section label if necessary.
6Y. Please provide description (classification and extents) for Jewell Ave and Gun Club Rd.
6Z. S. Addison St is not shown as being built with this phase per the exhibit. Include or provide connection to existing built roadway.
6AA. E. Baltic Pl (be consistent with all street naming, ALL).
6BB. Please revise, the regional trail is also on the south side of E Baltic Place.
6CC. PA 21 and 22 are currently part of Phase 2, not Phase 1.
6DD. Including vehicular connection to roundabout
6EE. Improvements to Jewell Avenue and S Gun Club, adjacent to the phase are required for this phase if they are not built with Phase 1.
6FF. Reference improvements to S Gun Club in Phase 4.
6GG. Either two separate ROW widths should be identified (Turn lane and without turn lane). Or, Could remove parking if want to maintain ROW with the dual turn lanes). ROW should be defined.
6HH. Texts updates for the phase 5 realignment.
6II. Reference improvements to S Gun Club in Phase 5.
6JJ. Include drainage on exhibit phases.
6KK. Exhibit currently doesn't show roadway extending to Flat Rock trail.
6LL. All typ sections should match those shown in MC GDP Sheet Set.
6MM. Please include Gun Club Rd and Jewell Ave in Developer's responsibility in the exhibits (also include roadway classification). These roadways will also need to be added to Phase 1 of the improvements as it stands now.
6NN. Add Typical section for E. Baltic Pl. from S. Gun Club Rd. to S. Addison St. (two options - 1. Could do two different ROW widths for this section, or 2. Could remove parking if want to maintain ROW with the dual turn lanes).
6OO. Coordinate with Traffic regarding Bike Lane removal from roadway to wider bike/pedestrian walk. Updated 2023 roadway manual indicates bike lanes are not desired on arterials.
6PP. Please define all abbreviations (typ.).
6QQ. As shown in the typical sections in the PIP exhibits and on the GDP, the 70' trail corridor does not start on the edge of the 80' ROW. Please revise statement in PIP narrative or exhibits.
6RR. As shown in the typical sections in the PIP exhibits and on the GDP, the 70' trail corridor does not start on the edge of the 114' ROW(?). Please revise statement in PIP narrative or exhibits.
6SS. Please extend regional trail in exhibits to match the narrative. (ALL).
6TT. E Baltic Pl (be consistent to provide full roadway names, ALL).
6UU. Open channels (A-C) Culverts (A-C) and Ponds (A, B, D, F) included in Phase 1? Match narrative
All improvements necessary to support the roadway, need to be included with the Roadway Phase (1).
6VV. All labels should match GDP amendment map.

6WW. S. Addison St is not shown as being built with this phase per the exhibit. Include or provide connection to existing built roadway including any required supporting roadway infrastructure. Include everything that is required with Phase 2 in the exhibit.
6XX. Fix location of Pond A. Currently shows regional trail going through it.
6YY. Include in boundary of Phase 3.
6ZZ. Improvements to S. Gun Club Rd and Jewell Ave adjacent to the phase are required with this phase – many instances throughout the document.
6AAA. Include or provide connection to existing built roadway including any required supporting roadway infrastructure. Include everything that is required with Phase 3 in the exhibit.
6BBB. Include or provide connection to existing built roadway including any required supporting roadway infrastructure. Include everything that is required with Phase 4 in the exhibit.
6CCC. Include or provide connection to existing built roadway including any required supporting roadway infrastructure. Include everything that is required with Phase 5 in the exhibit.
6DDD. Build road and ensure appropriate turnaround or end at Phase 6 access point.
6EEE. Include or provide connection to existing built roadway including any required supporting roadway infrastructure. Include everything that is required with Phase 6 in the exhibit.
6FFF. Include or provide connection to existing built roadway including any required supporting roadway infrastructure. Include everything that is required with Phase 6 in the exhibit.

7.Traffic Engineering (Carl Harline / 303-739-7584 / charline@auroragov.org / Comments in amber)

Traffic Impact Study

7A. There may be a limited roadway network in place at buildout year of the Murphy Creek GDP. Therefore, a buildout year analysis to assess this condition.
7B. MARIA is not an existing entity; therefore, it should not be referenced.
7C. Provide discussion on pedestrian connectivity, facilities, enhancements, etc.
7D. See comments throughout the report.

Murphy Creek GDP

7E. GDP land designation table is not consistent with TIS or PIP, 1246 Dus.

PIP

7F. Please review the PIP document. The document has clear direction from large-scale changes to detailed text edits.
7G. There are references to entities that do not exist – please avoid (MARIA).
7H. Show location of traffic signals per TIS.
7I. Make sure all sections are updated.

8.Utilities (Daniel Pershing / 303-739-7646 / ddpershi@auroragov.org/ Comments in red)

PIP

8A. The general development plan will not be approved by Aurora Water until the master drainage report is approved.

Utility Report

8B. Please remove City Engineer from the Signature Block as they no longer review and approve these plans.
8C. Please revise reference to 2023 as this is the current edition of Aurora Water Specifications.
8D. See pdf for text updates.
8E. Water Gems (or equal) modeling also required for these reports to verify velocities for pipelines meet criteria.
8F. Section IIA of the report states maximum elevation of 5690 FT. Please verify.
8G. Please also include all existing pipes are sized to handle the proposed flows and no improvements are required.
8H. In addition to the model results, please include a table calculating the demands for each planning area/basin under each scenario.
8I. Please ensure the criteria below is met for the max hour scenario. Some of these velocities are exceeded in the table above.
8J. Provide channel diagrams for each design point.

8K. Provide channel diagrams for each design point.
8L. Please also include peak loading in CFS for Channel diagrams.
8M. This calculation does not meet MUS design criteria. This value should be the gross acreage multiplied by 1500 gpd/acre for commercial use.
8N. Please add column for equivalent population, equivalent population/acre, and peaking factor as these are all needed to calculate peak flow per MUS design criteria.
8O. Please add column for equivalent population, equivalent population/acre, and peaking factor as these are all needed to calculate peak flow per MUS design criteria.
8P. Provide signature Block for Aurora Water and Fire Life Safety on this Exhibit.
8Q. Provide signature Block for Aurora Water and Fire Life Safety on this Exhibit.
8R. Please upsize to 10" as proposed flows are too large for 8" piping.
8S. Provide signature Block for Aurora Water on this Exhibit.

9. Fire / Life Safety (William Polk / 303-739-7371 / wpolk@auroragov.org / Comments in blue)
9A. No further comments.

10.Real Property (Maurice Brooks / 303-739-7294 / mbrooks@auroragov.org / Comments in magenta)
10A. Street Vacations move to DA-1250-61. New Street Dedications will be expected when new Plats are created. No further comments.

11.PROS (Michelle Teller / 303-739-7437 / mteller@auroragov.org / Comments in purple)
11A. Thank you for including a Form J in your recent submittal. See all comments on the GDP Amendment and update the other documents accordingly.
GDP
11B. Land Dedication: Please refer to the annexation agreement for the land dedication requirements. Per the annexation agreement, a total of 105 acres of park and open space (above and beyond the golf course) is required. Note that there are certain areas of the annexation agreement that include allowances for floodplain throughout the site up to 50% it between the 50 and 100 year. Please work with PROS to determine how we can best satisfy the annexation agreement.
Sheet 2
11C. Revise the Murphy Creek East trail to note 'community trail' instead of regional here.
Sheet 3:
11D. Ownership and maintenance of this corridor along Harvest should be kept private to the metro district. There has been a recent issue with not having clarity within the master plan regarding snow removal. Please call this out on the plans and verify that this can be retained to the Metro District.
11E. Call out areas in question for the 12 acres of stream management corridor. The two shown do not add up to 12 acres. Please provide a planning area for each to provide clarity.
Sheet 4
11F. See annexation agreement related to the floodplain. There are very specific requirements.
11G. Per the annexation agreement "Public lands located in the 50-year floodplain shall not receive public land donation credit. Public land donations located outside of the 50-year but within the 100-year will be accepted by the city and given a fifty percent (50%) credit if lands meet the following criteria.
11H. 1. Lands within the 100-year flood plain but outside the 50 must be identified as such on topographic maps acceptable for flood plain identification by the CITY storm drainage engineers.
11I. 2. Lands must be reasonably usable and accessible for recreation purposes."
11J. Typically, a $300 per unit park development fee is collected which would go toward the proposed parks. There is language in the annexation agreement of being 'credited' for the sites that are being constructed by the metro district. Please work with PROS to determine how best to attribute this (i.e. credit going toward Planning Areas 20-25, 28, etc.). Preference to have this written very clearly in this table to reference later.
11K. Unclear on the exact location of items listed in the form J. Include a planning area to clarify.
11L. The gun club creek is not seen as open space eligible for city ownership and maintenance. This needs to be

privately maintained. Since this is meeting MHFD requirements for an open channel, this can be given open space credit. Please refer to the PROS manual for the requirement regarding floodplain up to 50% of the total open space required for the full development.

11M. Areas where the trail is a sidewalk is not eligible for any PROS maintenance; this is required to be maintained by adjacent property owners as typical for all ROW sidewalk areas. Only areas that are designated as trail corridors and eligible for open space credit such as adjacent to the creek would be eligible for PROS ownership/maintenance.

11N. Keep trail within the center of the 70' corridor. Retain at least 25' from the edge of the corridor consistent with our typical buffer requirements.

11O. Clarify non-sidewalk conditions for the areas that will get a trail easement given to the city.

11P. All references in the full Form J should represent everything both north and south of Jewell. Update rows such as the murphy creek golf course accordingly to show the full 263 acres.

11Q. Private amenities are not eligible for PROS public land dedication requirements.

11R. For the last row in the form J, it may be helpful to include a minimum size and note whether it's anticipated to go toward PROS land dedication requirements or just general outdoor space for planning. Form J should only indicate spaces for PROS land dedication requirements.

11S. If items are to be smaller than what PROS land dedication standards require, include the site plan determined 'outdoor spaces' in a different table for Planning to track. For PROS these would need to be 0.5 acres minimum to meet pocket park standards.

11T. Add row for the Harvest PSCO easement trail/sidewalk and note private maintenance.

11U. Per the annexation agreement, a total of 105 acres of land for public use (above and beyond the minimum 209 acres minimum required for the golf course) shall be dedicated. Please update the Form J to identify all acreage within the full FDP meeting the 105 acres. Note this may include a portion of the floodplain per the FDP notes.

12.Arapahoe County (Cathy Valencia / cvalencia@arapahoegov.com/ 720-237-2415)

12A. Please ensure that the City of Aurora requests enough row for a 6-lane roadway on Gun Club.

13.Arapahoe County Planning (Terri Maulik / REFERRALS@ARAPAHOEGOV.COM / 720-874-6650)

13A. No additional comments to add. Please see initial response to first referral. We have concerns over the proximity of the housing project to the Lowry landfill.

14.Arapahoe County Engineering (Emily Gonzalez PE / 720-874-6500)

14A. See first review comments.

15.Xcel Energy (Donna George / 303-571-3306 / donna.l.george@.xcelenergy.com)

15A. Comment response acknowledged.

16.Metro Creek General Metropolitan District No. 3 (Paul C. Rufien, P.C. / paul@rufienlaw.com/ 720-506-9230)

16A. See first review comments.

17.Mile High Flood District (Derek Clark/ 303-455-6277)

17A. See below:

MAINTENANCE ELIGIBILITY PROGRAM (MEP)

MHFD Referral Review Comments

For Internal MHFD Use Only.	
MEP ID:	103279
Submittal ID:	10011144
Partner ID:	1629177
MEP Phase:	Referral

Date: June 21, 2023
To: **Ariana Muca**
Via Aurora Website
RE: MHFD Referral Review Comments

Project Name:	MURPHY CREEK GDP AMENDMENT NO 3 - GDP AMDT AND STREET VACATION
Location:	Aurora
Drainageway:	Gun Club Creek

This letter is in response to the request for our comments concerning the referenced project. We have reviewed this proposal only as it relates to maintenance eligibility of major drainage features, in this case:

- Improvements to Gun Club Creek
- Improvements to Harvest Gulch

We have the following comments to offer:

Public Improvement Plan

1) Please clarify the drainage phasing between the report text and the phasing exhibits. The Phase 1 text includes all open channel and culvert improvements; however, these are shown in different phases in the exhibits.
2) Please note that in the ongoing COA/MHFD CIP project for the Gun Club Creek Improvements, Culvert B's inlet is located in the vicinity of the existing culvert just upstream of the proposed Asbury Place Road. The northern portion of the COA golf course property will remain as open channel and should be shown as such.

GDP Amendment

3) The stream management corridor for Harvest Gulch is not shown on this document. Although shown in the PIP, please also include the delineation within the GDP and label the proposed stream corridor width.
4) The north-south portion of the stream management corridor just to the east of PA 12C appears to shrink in width drastically towards the northern end. Please maintain the minimum 150' width as shown elsewhere. If this portion of channel intends to utilize a portion of the COA owned golf course property, please ensure that the City of Aurora is in agreement with this direction.
5) Please label the proposed channel corridor widths for the stream management corridors on the GDP.
6) Please include an east-west stream management corridor on the north side of the COA golf course property as described by comment #2.
7) Previous discussions between the Murphy Creek East project team and PROS had included an option to have the regional trail in the vicinity of PA 26 and PA 27 follow along the proposed improvements to Harvest Gulch as opposed to directly south of Yale Avenue. Further coordination may be needed with all parties as the conceptual design of Harvest Gulch progresses.

Revised Letter of Introduction

8) In Section 8 "Identification of Stream Management Corridors", there is a statement about the 150' wide stream corridor adjacent to PA-21 being purchased, constructed, and maintained by City/MHFD at a later date. As noted in our last comment letter, MHFD does not own properties for this purpose. MHFD will be a project partner for the construction and include the completed improvements as part of our MEP program. Please revise this statement to reflect this.

MHFD requires responses to the review comments, please include these responses with any future submittal.

We appreciate the opportunity to review this proposal. Please feel free to contact me with any questions or concerns.

Sincerely,

Derek Clark, PE
Project Manager
Mile High Flood District

18.CDOT (Steven Loeffler / steven.loeffler@state.co.us)
18A. See below:

STATE OF COLORADO

Traffic & Safety
Region 1
2829 W. Howard Place
Denver, Colorado 80204

COLORADO
Department of Transportation

Project Name:	Murphy Creek GDP Amendment No 3		
		Highway:	Mile Marker:
Print Date:	6/22/2023	030	18.38

Traffic Comments:

Kiene 11/14/22: TIA - Proposed signal spacing requires progression analysis and description of the improvement signals closer than standard spacing provide to other network intersections and the corridor overall in their absence. Examine network with 3/4-movement restriction at intersection 17. All intersections need coordination with proposed future roadway network on the west side of Gun Club Road - prior planning documents for development across identify the original location for the Yale intersection as signalized. Signal at the realigned Yale and the original location is not likely to be demonstrated to operate acceptably for approval of both locations, if Yale is realigned to the east, the development plan on the west should be revised accordingly.

Right of Way Comments:

11/08/2022 - SDH - I have uploaded the CDOT ROW plans and the deed for a subsequent ROW dedication from Murphy Creek LLC to City of Aurora in 2000 (see pages 21-25 of Rec_B1014742). The current ROW width for SH-30 on the east side is 70' from the north-south section line (50' previous ROW plus the 20' dedicated). If the 20' ROW dedicated to the City of Aurora previously is to be deeded to CDOT this will be done through Penny Clemons. Is there a plat for this specific development area to be reviewed?

MJO 6/8/2023 - ?? - no real concerns with submittals in Rev 2 -

Permits Comments:

Other properties along west side of Gun Club have advanced their planning to ID full movement access points. Show how all full movement access points alignments align with west side. Show RoW planned for SH 30. See red line.

RS 11-15-22

6-14-23 Any access connecting this development with SH 30 will require an Access Permit. Access Permit Application can be found at: https://www.codot.gov/business/permits/accesspermits/forms/cdot0137

For reference Access Permit # 104033 is for the intersection of SH 30 and Jewell Ave. Traffic volume may require this permit to be updated. **–AE 6-14-23**

Bridges Comments:

Other Comments:

11-14-2022 Prior coordination with the development on the West side of Hwy 30 will keep Yale Avenue in its original location with no realignment. A State Highway Access Permit application for the original Yale location has been received by our office and is in queue for processing.

Other accesses shown to Hwy 30 include multiple full movement accesses and the north access is shown as signalized. Full movement access per the State Highwa Access Code is half mile spacing. Signalized accesses shall be coordinated with CDOT Traffic and meet appropriate signal warrants.

A meeting with the Murphy Creek team took place on October 28, 2022, where they were made aware of the development on the West side of SH 30 (Aspen Business Park) and that CDOT will be permitting access to Yale Ave. in the orignal location.

--Steve Loeffler, 11-14-2022

AMENDMENT TO ANNEXATION AGREEMENT

THIS AGREEMENT is made and entered into as of this 5th day of December, 1995, by and between G.C. NORTH, LLC, a Wyoming Limited Liability Company, and MURPHY CREEK LLC, a Wyoming Limited Liability Company, collectively referred to as "ANNEXORS," and the CITY OF AURORA, a Municipal Corporation of the Counties of Adams, Arapahoe, and Douglas, State of Colorado ("City").

Recitals:

1. WHEREAS, the CITY and ANNEXORS' predecessors, GUN CLUB PARTNERSHIP, entered into an Agreement dated April 14, 1986, recorded in the Arapahoe County Real Property Records in Book 5130, Page 136 (the "Annexation Agreement"), and

2. WHEREAS, ANNEXORS and CITY recognize that certain provisions in the Annexation Agreement need to be revised and accordingly have agreed to enter into this Amendment, and

3. WHEREAS, the parties mutually recognize that it is desirable and beneficial that the Property be developed as a golf course community.

Agreement:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ANNEXORS and CITY hereby agree to amend the Annexation Agreement in the following respects. The paragraph numbers referenced in this Agreement correspond to the paragraph numbers in the Annexation Agreement. To the extent there are no changes to the Annexation Agreement as set forth below, the provisions in the Annexation Agreement remain in full force and effect. Capitalized terms which are not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Annexation Agreement.

1. Definitions Paragraph I is amended by changing the term "Master Land Use Plan" is to read "General Development Plan," and shall mean the General Development Plan for the Property approved by the City Council, attached hereto as **Exhibit A.**

2. Streets

(a) Paragraph II.A. is amended to read as follows:

A. Except as otherwise provided in Exhibit B, "Schedule of Road Improvements," attached hereto and incorporated herein, ANNEXORS shall dedicate free and clear of all liens and encumbrances of any kind all rights-of-way for public streets for the full width thereof as required by the CITY and designed and fully improved to the standards provided for in the General Development Plan all public streets within the Property including public streets adjacent to the golf course and one-half of all public streets lying on or abutting the exterior boundaries of the Property without cost to CITY. Such dedication of streets shall occur at the time of approval of each Subdivision Plat for the Property; however, ANNEXORS shall dedicate such rights-of-way at an earlier time when determined by CITY to be required for commencement of construction of such streets or for extension of utilities. An earlier dedication shall not relieve ANNEXORS of their obligation to improve streets as provided herein.

(b) Paragraph II.B is deleted in its entirety.

(c) Paragraph II.D is deleted in its entirety.

(d) Paragraph II.E is amended by the addition, after the word "improvements" in the second line thereof, of the phrase "undertaken by ANNEXOR."

(e) Paragraph II.G is amended by deleting the following phrase from the first sentence: ". . . Gun Club Road south of the Property and . . . ."

3. Water and Sewer

(a) Paragraph III.C is amended to read as follows:

C. ANNEXORS agree to pay to CITY a per acre water transmission development fee as established by ordinance for the gross acreage within the Property, excluding land for the golf course and other public land dedications to the CITY pursuant to Article VI of this Agreement. The water transmission development fee shall be due and payable pro rata based upon the acreage of each plat at the time of CITY approval of each Subdivision Plat for the Property. The fee shall be that in effect at the time of payment. The CITY's obligation to provide water and sewer service to the Property shall not accrue until such time as the necessary fees are paid and all platting requirements with respect to the Property being platted are satisfied. The parties acknowledge ANNEXORS' payment

in 1986 of One Hundred Twenty Thousand Six Hundred Fifty One and 30/100 Dollars ($120,651.30) as prepaid water transmission fees pursuant to the Annexation Agreement. ANNEXORS and CITY agree that this money, together with the interest thereon, shall be applied toward the cost of construction of Jewell Avenue, as described in Paragraph X.A herein.

(b) Paragraph III.D is deleted in its entirety.

(c) Paragraph III.F is amended by the following:

(i) the phrase "and Metro Denver Sewage Disposal District No. 1" is deleted from the second sentence; and

(ii) the following sentence is added:

Notwithstanding the fees provided in this Article III, if provisions of water and sewer services requires payment of fees or charges to regional or metropolitan service agencies or other third party authorities, ANNEXOR shall provide such funds as and when required by such service agency, so long as such fees or charges are uniformly applied through the CITY.

(d) Paragraph III.H. is amended to read as follows:

H. ANNEXORS agree to pay to CITY a per acre sewer interceptor development fee as established by ordinance for the gross acreage within the Property, excluding land for the golf course and public land dedications dedicated to the CITY for public use pursuant to Section VI of this Agreement. The sewer interceptor development fee shall be due and payable pro rata based upon the acreage of each plat at the time of CITY approval of each Subdivision Plat within the Property. The fee amount shall be that in effect at the time of payment. The CITY's obligation to provide sewer service to the Property shall not accrue until such time as the necessary fees are paid and all platting requirements with respect to the Property being platted are satisfied. The parties acknowledge the payment in 1986 of Fifty Four Thousand Eight Hundred Forty One and 50/100 Dollars ($54,841.50) as prepaid sewer interceptor fees pursuant to the Annexation Agreement. ANNEXORS and CITY agree that such money, together with the interest thereon, shall be applied toward the cost of construction of Jewell Avenue as provided in Paragraph X.A hereof.

(e) Paragraph III.I is deleted in its entirety.

(f) Paragraph III.M is amended by deleting the phrase

> "and ANNEXOR agrees to advance the funds required to obtain such easements if the fees paid by ANNEXOR per Article III-C & G at the time were insufficient, subject to a reimbursement agreement or credit against the Article III-C & G fees"

from the second sentence.

(g) Paragraph III.N is hereby amended to read as follows:

> N. CITY shall pay for all oversizing of water and sewer lines (beyond base lines of 12 inches), whether same benefit ANNEXOR or landowners and parties other than ANNEXORS.

(h) Article III. Water and Sewer, is hereby amended by the addition of a new paragraph P., which reads as follows:

> P. ANNEXORS shall pay the cost of extension of 12 inch water lines to the eastern boundary of the Property within one hundred eight (180) days from written notification from the CITY that a third party has commenced construction of a water line to the eastern boundary of the Property. CITY shall pay the cost of oversizing water lines over 12 inches.

4. Storm Drainage

(a) Paragraph IV.A is hereby amended to read as follows:

> A. Storm drainage improvements within the Property shall be constructed by ANNEXOR in full conformity with the Master Storm Drainage Plan (the "Master Drainage Plan") for the Property, which shall be provided by ANNEXOR and approved by CITY.

(b) Paragraph IV.B is amended by the deletion of the third sentence.

(c) Paragraph IV.C is hereby amended to read as follows:

> C. ANNEXOR shall pay the per acre drainage basin fee with respect to the Property for basin-wide facilities as established by CITY's ordinances. The fee, which is currently One Thousand Thirty Three Dollars ($1,033.00) per acre, shall be payable pro rata based upon the acreage of each plat at the time of CITY approval of each

subdivision plat within the Property, excluding land dedicated for the golf course, the regional trail and other public land dedications.

5. Crossings Policy Article V, Crossings Policy, is amended by the deletion of Paragraphs A through D, and the insertion in their place of the following:

> Except as specifically set forth in the Master Drainage Plan, the parties mutually agree that whenever it is found and determined by CITY that a crossing of a drainageway, existing or proposed roadway, railroad or any impediment to a roadway is required within the Property, CITY shall specify design criteria, and ANNEXOR shall construct the crossing, including transition improvements, in conjunction with the development of the Property. The crossings required for the described property shall be constructed in conformance with CITY standards. Notwithstanding the foregoing, ANNEXOR shall not be responsible for crossings on Jewell Avenue, which shall be constructed as part of the Jewell Avenue improvements, except that ANNEXOR may be required to construct a drainage crossing for Murphy Creek as set forth in the Master Drainage Plan.

6. Public Land Dedication

(a) Paragraph VI.A. is hereby amended to read as follows:

> A. ANNEXORS agree to dedicate certain land to CITY to be used for public purposes. Land dedicated shall be acceptable to CITY and shall total not less than two hundred nine (209) acres for a golf course and not less than one hundred five (105) acres of land for public use, as shown on the General Development Plan. The Parties agree that the 209 acres to be dedicated for a golf course (the "Golf Course Property") exceeds the acreage which ANNEXOR would ordinarily be required to dedicate as public land under the ordinances, rules, and regulations of CITY. CITY acknowledges that the Golf Course Property is in excess of any other land which is required by law to be dedicated for public use, such as parks and schools, or for any other public purpose. Dedication of lands other than the golf course shall occur at the time of approval of Subdivision Plats for development adjacent to such lands. All dedicated lands, excepting the Golf Course Property, shall be platted by ANNEXORS at the time of dedication in accordance with the CITY's subdivision

regulations. The external boundaries of the dedicated land, other than the Golf Course Property, shall be monumented on the ground as described by the City Code. Dedication, development, and construction of the golf course shall occur as provided in a separate Golf Course Development Agreement between ANNEXOR and CITY.

(b) Paragraph VI.C is amended to read as follows:

C. ANNEXOR shall enter into an agreement with the appropriate School District to provide for dedication of land to the School District.

(c) Paragraph VI.E is deleted in its entirety.

(d) Paragraph VI.F. is amended to read as follows:

F. The CITY will provide fire service to the Property based on available resources. When development reaches one hundred (100) dwelling units constructed on the Property, ANNEXORS shall donate a house within the Property with an oversized garage to serve as an interim emergency medical service facility. CITY agrees to pay all costs associated with operating the facility, including taxes (if any), utilities, insurance, and maintenance. In the event a regional fire station is not constructed on or before the tenth anniversary of occupancy, CITY shall lease the temporary facility from the ANNEXORS at a residential market lease rate beginning the first day of the eleventh year, up to and including the last day of the fifteenth year. After year fifteen, CITY agrees it shall return the structure to ANNEXORS or purchase it at the ten year value. At such time as a regional fire station is constructed, the temporary EMS facility shall be returned to ANNEXORS, unless CITY has previously purchased the facility as provided herein.

7. Zoning and Design

Paragraph VIII.A. is hereby amended to read as follows:

A. The parties recognize that it is the intent of ANNEXORS to develop the Property in a manner consistent with the General Development Plan, Exhibit A, attached hereto, and that the granting of such zoning is a condition to this Agreement. The initial grant of requested zoning shall satisfy this condition. The parties acknowledge that the development of a golf course establishes an essential element of the character of the Property necessary for rezoning the Property as shown in

the General Development Plan. If a golf course is not constructed because of circumstances described in Section I. paragraph 6 of the Golf Course Agreement between the parties, the CITY, after such public hearing process as may be required by City Code, will rezone the Property to the zone designation which existed on the Property prior to adoption of the General Development Plan. In such event, all obligations of ANNEXOR to construct amenities and/or facilities in the General Development Plan shall be of no further force or effect. This provision shall not prevent the ANNEXORS from requesting consideration of other zone designations which may be appropriate for the Property.

(b) Paragraph VIII.F. is deleted.

8. Special Districts

Article IX is hereby amended by adding a paragraph B. which reads as follows:

B. ANNEXORS shall use reasonable efforts to establish a Title 32 District for the purposes of constructing regional improvements which may include, but is not limited to a fire station (including a temporary facility described in Paragraph VI.F), arterial medians, right-of-way acquisition for, and construction of, Jewell Avenue, medians, bridges, and other improvements. The District shall be established at the time of CITY approval of the first Subdivision Plat for residential development. Review and consideration of the Agreement shall be pursuant to Chapter 36.5 of the City Code. The CITY may, as part of its Intergovernmental Agreement with the District, provide for the payment of the off-site traffic impact fee and other fees as determined by CITY to the District for contribution toward the cost of the construction of Jewell Avenue or other traffic improvements.

9. Extraordinary Public Improvements

Article X is amended by the addition of Paragraph D, which reads as follows:

D. The extension of Jewell Avenue from its existing eastern terminus at Genoa Street to the Property is an extraordinary public improvement which benefits both the Property and the region. ANNEXORS consent to the use of prepaid water and sewer fees paid in 1986 and the

interest thereon toward the cost of the acquisition and construction of Jewell Avenue. Jewell Avenue may, subject to availability of funds in the District described in Paragraph IX.B, be constructed as a two-lane paved road from the current eastern terminus of Jewell Avenue at Genoa Street to that portion of Jewell Avenue which is purportedly to be constructed under a separate agreement by the E-470 Public Highway Authority. Additional improvements may be added to Jewell Avenue by a special district or other construction and financing mechanisms.

10. General Responsibilities Article XI, "General Responsibilities of the City of Aurora," is amended by the addition of Paragraphs I and J, which read as follows:

I. Any and all obligations of the CITY for water, sewer, and drainage improvements shall be the sole obligation of the CITY's Utility Enterprise, and as such shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the CITY within the meaning of any constitutional, statutory, or charter limitation. In the event of a default by the CITY on any of its obligations under the terms of this Agreement. ANNEXORS shall have no recourse against any of the funds of the CITY except for the Utility Enterprise Fund.

J. Any and all obligations of the CITY for public improvements, other than water and sewer and golf improvements, shall be subject to annual appropriation by the City Council.

11. Entire Agreement Except as provided otherwise herein, this Amendment to the Annexation Agreement and the Annexation Agreement and the Exhibits and Addenda thereto constitute the entire understanding among the parties with respect to the subject matter hereof.

12. No Implied Terms: No obligations, agreements, representations, warranties, or certifications, expressed or implied, shall exist as among the parties, except as expressly stated herein.

13. Binding Effect: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that neither this Agreement nor the Annexation Agreement, nor any rights or obligations thereunder, may be assigned or transferred by operation

of law or otherwise without the prior written consent of all the parties hereto.

14. Recordation: The obligations contained in this Agreement shall be deemed covenants running with the land and this Amended Annexation Agreement shall be recorded in the real property records of the Arapahoe County Clerk and Recorder.

15. Notices. All notices, certificates, or other communications hereunder shall be deemed given when personally delivered, or after the lapse of ten (10) business days following the mailing by registered or certified mail, postage due and paid, addressed as follows:

For CITY: City of Aurora, Colorado
1470 South Havana, Room 708
Aurora, Colorado 80012
Attn: Director of Development Services

For ANNEXOR: G.C. North, LLC
Murphy Creek LLC
3545 South Tamarac, Suite 300
Denver, Colorado 80237

or any other such addresses as said parties may hereinafter or from time to time designate by written notice to the other party.

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

CITY OF AURORA, COLORADO

By _____
Paul E. Tauer, Mayor

ATTEST:

_____
Donna L. Young, City Clerk

APPROVED AS TO FORM:

_____
City Attorney's Office

AZY1017.95

ANNEXOR: G.C. NORTH LLC, a Wyoming Limited Liability Company

By _____ manager

ANNEXOR: MURPHY CREEK, LLC, a Wyoming Limited Liability Company

By _____ manager

State of Colorado)
) ss.
County of Arapahoe)

Subscribed and affirmed before me by Harvey B. Alpert, for G.C. North LLC, this 5th day of December, 1995.

My commission expires:
11-13-99

JoAnn M. Stolk
Notary Public

[S E A L]

State of Colorado)
) ss.
County of Arapahoe)

Subscribed and affirmed before me by Harvey B. Alpert, for Murphy Creek, LLC, this 5th day of December, 1995.

My commission expires:
11-13-99

JoAnn M. Stolk
Notary Public

[S E A L]

AZY1017.95

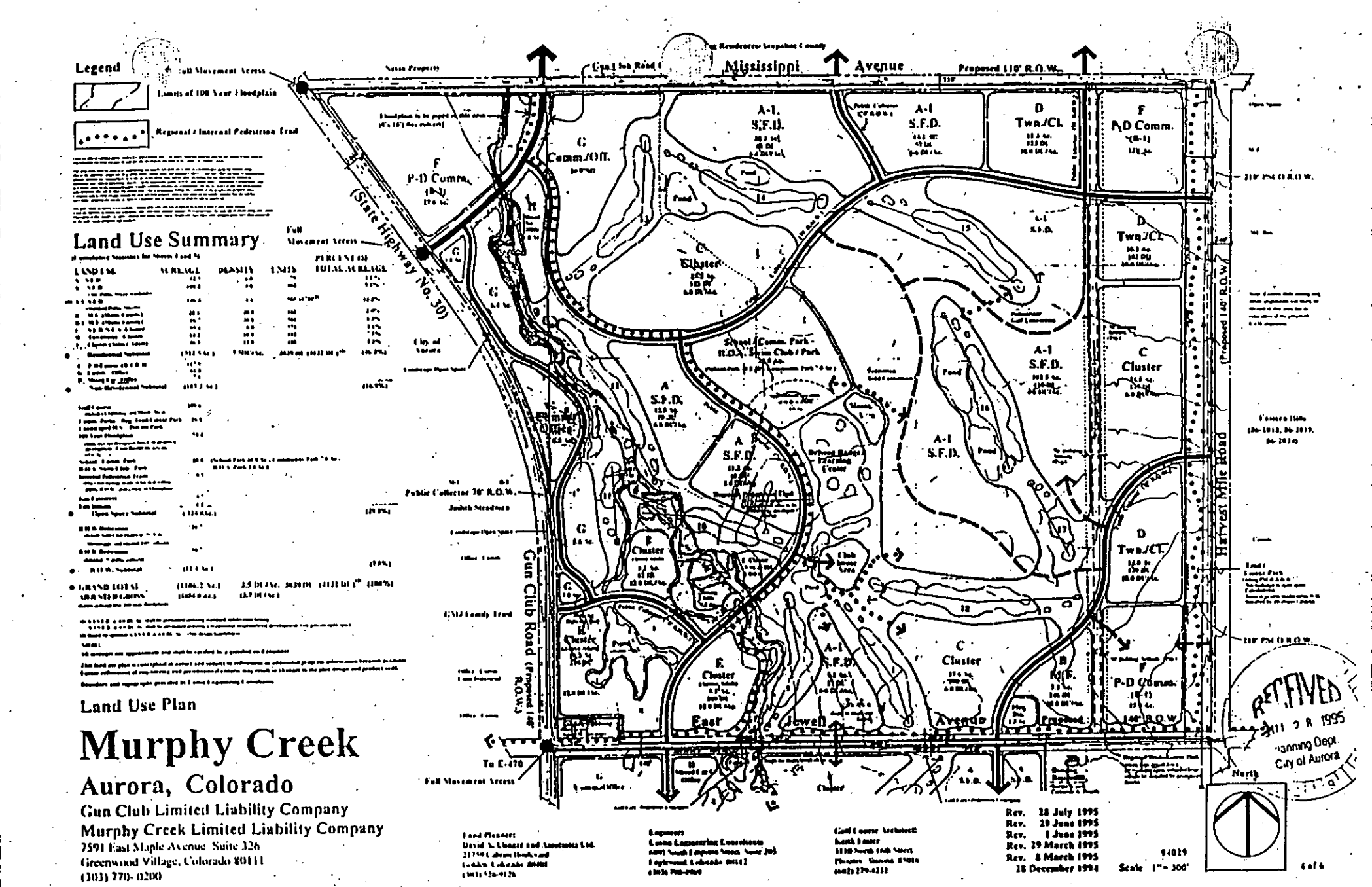
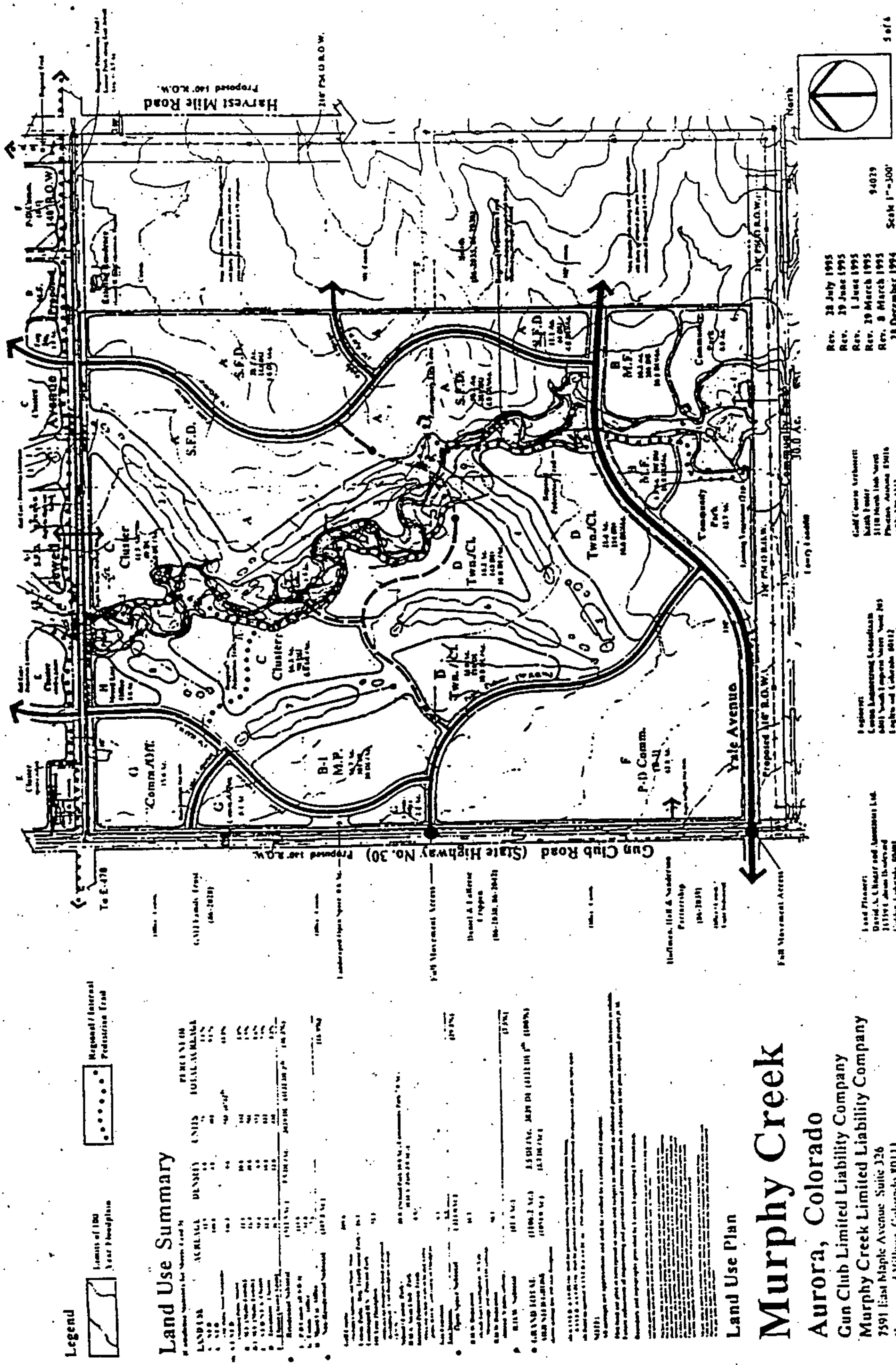


EXHIBIT A
Page 1 of 2

EXHIBIT A
Page 2 of 2



Amendment to Annex. #39.
12/5/95
Murphy Creek

EXHIBIT B

Schedule of Road Improvements

ANNEXORS shall design and construct, at their sole cost, the following road improvements within the Property:

Roads	Construction	ROW (on plan)	Lanes	Sidewalks	Median
Mississippi	Only Construct So. 1/2	110 feet	2 each Direction	South Side Only Meandering Attached/ Detached Sidewalk	No medians
Yale	Full	110 feet	2 each Direction	Attached Sidewalk on North Side Only	No medians
Jewell	Full	140 feet	As determined by City	Meandering Attached/Detached Sidewalk	Medians (See below)
Gun Club	Only Construct East 1/2	140 feet	As determined by City	Detached Sidewalks East Side	No Medians
Gun Club Connector	Full	110 feet	2 each direction	No sidewalks	No Medians
Harvest Mile	West 1/2	110 feet	2 each direction	No Sidewalks	No Medians

Mississippi:	o	4 lanes (+ turn lane, if necessary)
	o	Constructing only southern half
	o	10' attached and detached meandering sidewalk with xeriscape and buffalo grass side landscaping at detached portions; irrigation system, as necessary
Yale:	o	4 lanes (+ turn lane, if necessary)
	o	No medians with attached sidewalks on North side
Jewell:	o	Meandering attached/detached sidewalks south side with xeriscape and buffalo grass side landscaping at detached portions; irrigation system, as necessary
	o	10' wide pedestrian walkway/bike path on north side with elaborate landscaping including turf, irrigation system, etc.
	o	Median "hardscape," including irrigation system, concrete, splash block, etc. City will install and maintain "softscape" landscaping. Medians will be installed when Jewell is widened to 4 lanes
Gun Club:	o	Detached sidewalks on east side
Harvest:	o	No medians
	o	Dedication of ROW

ORD 85-251
052

GUN CLUB Partnership (Associates)

Recorded by
Arapahoe County
05/28/87
Book 5130 Page 0136

ANNEXATION AGREEMENT

THIS AGREEMENT made and entered into this 14th day of April, A.D. 1986, by and between GUN CLUB PARTNERSHIP, a Colorado General Partnership, hereinafter referred to as "ANNEXOR", and the CITY OF AURORA, a municipal corporation of the Counties of Adams and Arapahoe, State of Colorado, hereinafter referred to as "CITY."

W I T N E S S E T H:

WHEREAS, ANNEXOR is the owner of the property described in Exhibit "A" hereto (the "Property"), and

WHEREAS, ANNEXOR has filed petitions for annexation with City of the unincorporated lands comprising the Property, and

WHEREAS, the parties mutually agree and recognize that it is desirable for the development of the Property by ANNEXOR that ANNEXOR obtain certain municipal services from CITY, including but not limited to those described herein; and

WHEREAS, CITY has determined that it is in the best interests of CITY to annex the Property and to provide municipal services and receive revenues from the development to occur on the Property;

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them,

IT IS AGREED:

I

DEFINITIONS

"Annexor" as used in this Agreement shall mean and refer to ANNEXOR, its successors, assigns and designees, including but not limited to one or more designee Districts as hereafter defined.

"Crossings" shall mean and refer to all bridges, culverts, arches and other types of facilities and structures utilized to cross certain roadways and storm drainage areas within and on the exterior boundary of the Property, including but not limited to those shown on the Master Land Use Plan.

"District" when used herein shall mean and refer to any general, special and/or metropolitan district organized to provide facilities and/or services to the Property pursuant to Title 32, Colorado Revised Statutes, 1973, as amended.

"Master Land Use Plan" shall mean and refer to the series of Land Use and Zoning Plans (including the associated use and development standards, restrictions and phasing plan) submitted herewith as Exhibit "B" and as approved by the Aurora City Council.

"Streets" shall mean and refer to residential, commercial, collector, minor and principal arterial streets and roadways.

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

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

II

STREETS

A. ANNEXOR agrees to dedicate, at the time of each platting, all necessary street rights-of-way for the full width thereof as provided by the Master Land Use Plan, or if not specified thereon, then as established by CITY for Streets lying within the Property. ANNEXOR also agrees to dedicate principal arterials and highways within the Property to CITY earlier than platting, if such dedications are reasonably required by CITY for commencement of construction of such roadways. Further, within the earlier of forty-eight (48) months from the date of CITY approval of this Agreement or when reasonably determined by CITY to be required for commencement of construction of such streets in accordance with the phased development of the Property, ANNEXOR agrees

to convey to CITY one-half the width of all Streets lying on the exterior boundaries of the Property as shown on the Master Land Use Plan, without cost to CITY. ANNEXOR further agrees to fully improve said Streets, as required by CITY standards, for the full width thereof lying within the Property, and one-half of said Streets abutting on and contiguous to or on the exterior of the Property; provided, however, that (i) ANNEXOR agrees to dedicate a 200-foot right-of-way for the Gun Club Road Expressway and Jewell Avenue within the Property and one-half thereof on the perimeter of the Property, (ii) ANNEXOR shall be responsible only to pay for and improve two thirty-nine foot (39') roadways, a twenty-four foot (24') center island and two eight foot (8') bicycle paths within the Property and to improve a thirty-nine foot (39') roadway, one-half of a twenty-four foot (24') center island and an eight foot (8') bicycle path on one side where such roadway is on the perimeter of the Property and (iii) any additional roadway improvements (except acceleration-deceleration lanes at access points as needed, for development of the Property) shall be the responsibility of CITY or other landowners. The alignment of Gun Club Road and Jewell Avenue shall be located generally as shown on the Master Land Use Plan, but with consent of CITY and ANNEXOR may differ from the alignment shown on the Master Land Use Plan.

B. All improvements to be installed by ANNEXOR shall be phased by ANNEXOR as needed for development of the Property. Except as expressly noted in Article II-A above: (i) Streets shall be located in conformance with the street alignments established in the Master Land Use Plan, or if not so specified, then in accordance with CITY roadway alignments unless otherwise agreed to by CITY and ANNEXOR; and (ii) streets shall be installed in accordance with the construction standards of CITY and if applicable, the construction standards of the Colorado Department of Highways. ANNEXOR also agrees to include the Property in Districts established by CITY for improvement of expressways and highways. ,,

C. ANNEXOR shall grant to City an easement in gross adjoining minor and principal arterial streets sufficient to provide necessary cut and fill to establish the grade of said arterials on a one foot incline for every three feet of distance. Said easement in gross shall be released to ANNEXOR at such time as the adjacent property is filled and maintained at grade of said minor and principal arterial streets.

D. If CITY reasonably determines that it is necessary for access purposes for the ANNEXOR to construct Streets through the land of others, or for CITY to utilize its powers of condemnation for such purposes, then, pursuant to separate

agreement with CITY to be entered into prior to undertaking such street improvements, and except to the extent that ANNEXOR is reimbursed pursuant to Article X hereof, ANNEXOR will advance the funds required for such purposes and be reimbursed for the cost thereof. Additionally, ANNEXOR agrees that if CITY or another landowner constructs streets adjacent to or through the Property, which construction is the obligation of ANNEXOR pursuant to this Agreement, then ANNEXOR agrees to reimburse CITY or such other landowner on an equitable basis as development of the Property progresses. Such reimbursement shall be pursuant to separate agreement between ANNEXOR and CITY.

E. ANNEXOR agrees to warrant streets and roadway improvements for a period of twelve (12) months from the date of completion of such improvements and to correct any material defects thereto as further described in Article XI, B & C. Upon correction of such defects, CITY shall be responsible for repair and maintenance thereof, including maintenance of medians and rights-of-way as approved pursuant to the Master Land Use Plan; provided, however, that ANNEXOR will be responsible for correction and repair of any damage to streets and roadways within the Property caused by ANNEXOR's construction traffic or ANNEXOR's construction activities on the Property. CITY will cooperate with ANNEXOR in implementation of an enforcement program to minimize street damage by construction related traffic.

F. ANNEXOR shall pay for installation of signage and signalization for all Streets within the Property as required at the time of platting of such streets at ANNEXOR's expense pursuant to the Uniform Manual of Traffic Devices of the State of Colorado. ANNEXOR will advance the funds required for full signalization of perimeter streets, when needed, subject to reimbursement on an equitable prorata basis by other landowners contributing to the warranting of such signals, such reimbursement to be administered by CITY by separate agreement between ANNEXOR and CITY.

G. ANNEXOR agrees to pay an offsite traffic impact fee for the engineering, improvement and extension of certain arterial streets, through or adjacent to public lands, including as a first priority, but not limited to improvement of Gun Club Road south of the Property and Jewell Avenue west of the Property. The fee shall be based upon the Property's fair and equitable share of such roadway improvements reasonably attributable to development impacts of the property within CITY. Such fee shall be Five Hundred Dollars ($500.00) per acre, less the public land credit as defined in Article III-C hereof, but such fee may be adjusted by generally applicable Council ordinance. Such fee shall be due and payable pro-rata at the time of each plat approval based

upon the acreage of each plat and upon assurance to ANNEXOR by CITY of completion of such offsite roadway improvements, but may be paid earlier by ANNEXOR at ANNEXOR's option.

III

WATER AND SEWER

A. It is agreed that subject to the provisions of Article III-K hereof, CITY will provide water and water taps adequate to serve the Property as fully zoned and developed in accordance with the Master Land Use Plan. ANNEXOR will pay water tap fees as are required by CITY at the time said taps are needed, so long as such fees are uniformly applied through CITY.

B. CITY agrees to install all water transmission lines to, on the boundary of, and within the Property and to deliver water to the Property in phases as required for development of the Property. Such water transmission lines shall have sufficient capacity to serve the demands of the Property in accordance with the maximum zoning and development requirements as provided in the Master Land Use Plan. CITY agrees to provide such water service in a timely manner when required by ANNEXOR for development of the Property with sufficient capacity to provide adequate fire protection to serve the Property as developed. In no event shall CITY be required to provide such water service prior to 180 days after notification in writing by ANNEXOR of the need for such services. ANNEXOR agrees to install water distribution lines within the Property in accordance with CITY's standards and specifications.

C. ANNEXOR agrees to pay to CITY a Water Transmission Development Fee of One Thousand, One Hundred Dollars ($1,100.00) per acre for the acreage within the Property, less any credit for lands dedicated for public use as hereinafter defined (the Public Land Credit). The Water Transmission Development Fee shall be due and payable as hereafter described. Within thirty (30) days of final CITY approval and execution of this annexation agreement, ten percent (10%) of the Water Transmission Development Fee shall be paid based on the acreage of the Property less the Public Land Credit. Unless paid as described in Article III-D, the balance of such fee shall be paid pro-rata at the time of each plat approval, but may be paid earlier by ANNEXOR at ANNEXOR's option. The Public Land Credit shall be comprised of all tracts of land dedicated to public use all as shown on the Master Land Use Plan, or otherwise so dedicated, excepting Streets and utility rights-of-way, and shall be exempt from the Water Transmission Development Fee. The

total Water Transmission Fees paid or advanced by ANNEXOR for water transmission facilities shall not exceed Eleven Hundred Dollars ($1,100.00) per acre of the Property less the Public Land Credit as provided in Article III-C, so long as any unpaid balance of such fee is paid in full not later than five (5) years from the date of approval and execution of this Annexation Agreement by CITY and ANNEXOR. Otherwise, ANNEXOR shall pay the Water Transmission Development Fees in effect at the time of platting as to the portion of the fees then unpaid.

D. ANNEXOR further agrees to pay to CITY such additional funds as may be required from time to time to extend water transmission lines to serve the Property in phases as required for development subject to the following:

1. If the lines are oversized to serve other landowners, ANNEXOR and CITY shall enter into a payback agreement as described in Article III-N hereof;

2. To the extent such lines only serve the Property, then such funds so paid will be credited toward the balance of the Water Transmission Development Fee then owing, if any.

E. The parties mutually agree that ANNEXOR shall design and install water distribution lines and fire hydrants within the Property, at ANNEXOR's expense, in accordance with CITY's standards and specifications, subject to approval of the City Engineer, the Department of Utilities and the Fire Department.

F. It is agreed that subject to the provisions of Article III-K hereof, CITY will provide sewer taps adequate to serve the Property as fully zoned and developed in accordance with the Master Land Use Plan. ANNEXOR will pay sewer tap fees required by CITY and Metro Denver Sewage Disposal District No. 1 at the time such taps are needed, so long as such fees are uniformly applied through CITY.

G. CITY agrees to install all sewer interceptor lines to, on the boundary of and within the Property and to provide such sewer service in phases as required for development of the Property. CITY shall install such sewer interceptor lines with sufficient capacity to serve the requirements of the Property in accordance with the maximum zoning and development requirements as provided in the Master Land Use Plan. CITY agrees to provide such sewer service in a timely manner when required by ANNEXOR for development of the Property. In no event shall CITY be required to provide such sewer service prior to 180 days after notification in writing by the ANNEXOR. ANNEXOR agrees to install sanitary sewer

collection lines within the Property in accordance with CITY's standards and specifications.

H. ANNEXOR agrees to pay to CITY a sewer interceptor development fee of Five Hundred Dollars ($500.00) per acre for the acreage within the Property, less the Public Land credit as defined in Paragraph III-C. The sewer interceptor development fee shall be due and payable as hereafter described. Within thirty (30) days of final CITY approval and execution of this Annexation Agreement, ten percent (10%) of the sewer interceptor development fee shall be paid based on the gross acreage of the Property less the Public Land Credit. Unless paid as described in Article III-D, the balance of such fee shall be due and payable pro-rata at the time of each plat approval but may be paid earlier by ANNEXOR at ANNEXOR's option. The total sewer interceptor fees paid or advanced by ANNEXOR for sewer interceptor facilities shall not exceed Five Hundred Dollars ($500.00) per acre of the Property less the Public Land Credit as provided in Article III-I, so long as any unpaid balance of such fee is paid in full not later than five (5) years from the date of approval and execution of this Annexation agreement by CITY and ANNEXOR. Otherwise, ANNEXOR shall pay the sewer interceptor fees in effect at the time of platting as to the portion of the fees then unpaid.

I. ANNEXOR agrees to pay to CITY such additional funds as may be required from time to time to extend sewer interceptor lines to serve the Property in phases as required for development subject to the following:

1. If the sewer interceptor lines are oversized to serve other landowners, ANNEXOR and CITY shall enter into a payback agreement as described in Article III-N hereof;

2. To the extent such lines only serve the Property, then such funds so paid will be credited toward the balance of the Sewer Interceptor Fees then owing, if any.

J. ANNEXOR agrees to dedicate all necessary unobstructed rights-of-way for utility easements needed for water and sewer lines to serve the area described herein, in accordance with CITY's uniformly applied standards. ANNEXOR shall grant additional temporary construction easements for installation of water and sewer mains where required by CITY. "Unobstructed" shall mean freely accessible for all required maintenance equipment.

K. ANNEXOR hereby agrees that all promises of water and sanitary sewer service made by this Agreement are subject to any uniformly applied water and sewer tap allocation program of CITY, and are subject to any other uniformly applied

general restrictions of CITY, relating to the provision of water and sanitary sewer service.

L. Except as expressly set forth herein, water and sewer tap fees and all other utility charges for the Property will not exceed those charged generally at any given time within CITY. Other than water and sewer usage charges uniformly charged by CITY, no other fees or charges except as expressly set forth herein may be made for water or sewer services or facilities.

M. CITY agrees to install Water Transmission Lines and Sewer Collector Lines to serve the Property in the most direct and feasible manner, using public rights-of-way whenever possible. However, to the extent that any easements are required for water transmission lines or for sanitary sewer interceptor lines through the property of others, CITY will provide or obtain necessary easements as required, including utilization of its powers of condemnation as permitted by law, in order to acquire the same and ANNEXOR agrees to advance the funds required to obtain such easements if the fees paid by ANNEXOR per Article III-C & G at the time were insufficient, subject to a reimbursement agreement or credit against the Article III-C & G fees. Further, to the extent that cuts in excess of twenty-five (25) feet are required for sewer lines, CITY will not unreasonably withhold its consent to permit ANNEXOR to utilize lift stations.

N. To the extent the water and sewer lines are oversized for the benefit of landowners and parties other than ANNEXOR, CITY, for a period of fifteen (15) years from installation of such facilities, will require such other landowners to reimburse ANNEXOR in cash for the cost of oversizing pursuant to a pay-back agreement providing for repayment to ANNEXOR in similar manner to payment of such fees hereunder, but with the entire balance due no later than time of platting.

O. ANNEXOR shall transfer to CITY by quit claim deed its rights to all deep well water aquifers underlying the Property. The deep well aquifers to be transferred to CITY include any Denver, Dawson-Arkose, Arapahoe and Laramie-Fox Hills.

IV

STORM DRAINAGE

A. Storm drainage improvements shall be constructed by ANNEXOR in full conformity with the storm drainage regulations and ordinances of the CITY and the applicable drainage master-plan of CITY in effect at the time of construction. Subject

to the provisions of Article IV-D below, ANNEXOR agrees to pay the storm drainage development fee as established by City Council for improvements to major drainageways within the Murphy Creek Basin in accordance with the provisions of the City Code.

B. All required storm drainage improvements shall be designed and constructed in phases prior to or concurrently with development of the Property and in a manner that will prevent flooding in said developed area and to provide the appropriate transitions to undeveloped areas. The rights-of-way and easements for storm drainage within Murphy Creek shall be of sufficient width to pass drainage from all tributary areas in a 100-year developed state and be able to provide for a 12-foot maintenance road. The storm drainage plan shall be in compliance with the applicable masterplan, as adopted by City Council, unless otherwise planned by a registered engineer and approved by City Council as a revision to the masterplan. The ANNEXOR accepts full responsibility for the cost for the passage of all drainage flows resulting from the development of the Property to accommodate the 100-year storm within portions of the Property that are not designated as a major drainageway by the masterplan.

C. In the event ANNEXOR desires to complete the development of any portion of the Property prior to completion of the storm drainage improvements to major drainageways (Murphy Creek) by CITY, ANNEXOR may make those improvements by advancing the required funds and ANNEXOR shall receive a credit toward any unpaid storm drainage development fees. If the cost of such improvements exceeds the unpaid storm drainage development fees, ANNEXOR may apply for reimbursement from CITY as funds become available from other developers within the Murphy Creek Basin, on a first-come, first-serve basis, together with ANNEXOR's cost of financing thereof, but in no event later than twenty-five (25) years after such funds are advanced. CITY and ANNEXOR agree that upon request of ANNEXOR, CITY shall delegate construction of storm drainage improvements to Murphy creek within the Property to ANNEXOR, to be installed in accordance with CITY standards. In such event, ANNEXOR shall receive a credit for amounts so expended against the fees and shall receive reimbursement from other landowners within the basin as provided herein.

D. It is agreed that ANNEXOR shall have the right to review and participate in the preparation of CITY's Masterplan(s). In all events, it is agreed that the CITY's Masterplan(s) will utilize the most cost efficient methodology and that the Masterplan(s) will prorate drainage basin costs amongst all of the landowners on major drainageways on a fair and equitable basis. CITY also agrees that insofar as it relates

to the Property or the basin affecting the Property, the Masterplan(s) shall be completed within twelve (12) months from the date of annexation of the Property.

V

CROSSINGS POLICY

A. CITY's Engineer shall review with ANNEXOR design criteria for all Crossings, including but not limited to those shown on the Master Land Use Plan and otherwise required within the Property. ANNEXOR shall pay the total cost of the Crossings within the Property, including all transitions of any drainageway under or through the crossing, if not included in the drainage basin fee described in Article IV-C.

B. If a Crossing is required on the exterior boundary of the Property, ANNEXOR shall be responsible for its proportionate share of the cost of construction, as reasonably determined by CITY.

C. The Crossings required for all minor and principal arterials, expressways and collector streets on the exterior boundaries and all minor and principal arterials and expressways within the Property shall be constructed in conformity with the then existing CITY standards and shall be installed as required by ANNEXOR's phased development schedule.

D. ANNEXOR and CITY, prior to construction of each Crossing, shall agree upon a reasonable procedure for designing said Crossings, and for competitive bidding to assure cost efficiency, all in accordance with CITY's contract administration procedures.

VI

PUBLIC LAND DEDICATION

A. ANNEXOR, as consideration for receiving municipal services, agrees to convey to CITY, at the time of platting, areas to be dedicated for public purposes of six percent (6%) of the area of the Property zoned for residential uses. ANNEXOR also agrees to dedicate, in connection with nonresidential areas, two percent (2%) of the total area of the Property zoned for non-residential uses to be used for municipal

purposes, including fire and police facilities. All lands dedicated hereunder shall be platted by ANNEXOR in accordance with CITY's subdivision regulations. The external boundaries of the donated lands shall be monumented on the ground as described by the City Code of CITY. ANNEXOR agrees that if, between the time of annexation and subdividing, any of the Property is rezoned from a nonresidential to a residential classification, or a residential zoned area is rezoned to a higher density, CITY may require additional land dedications at the time of subdiviion platting, in accordance with the percentages described above. CITY, upon agreement with ANNEXOR, may accept cash in lieu of any required land donation. Cash in lieu of land shall be based on the appraised value of the land as zoned, but not improved.

B. In addition to the dedication of land, ANNEXOR agrees to pay to CITY at the time of each residential building permit application, $300.00 per dwelling unit for park development of land dedicated to CITY. Such $300.00 per dwelling unit fee shall be utilized within the Property for park improvements in accordance with a schedule agreed to between CITY and ANNEXOR consistent with requirements for park land associated with platting. CITY and ANNEXOR agree that upon request of ANNEXOR, CITY shall delegate construction of such park improvements to ANNEXOR to be installed to CITY standards and in such event, ANNEXOR will receive a credit toward such fees for amounts so expended. In the event ANNEXOR needs to complete park facilities earlier than the time that sufficient funds are available from the $300.00 per dwelling unit fee, pursuant to separate agreement, ANNEXOR may advance funds to complete such park and shall receive a credit at the time of later plats for such fees so advanced, together with ANNEXOR's cost of financing thereof. CITY will grant ANNEXOR the right of first refusal to repurchase any dedicated public lands not used for public purposes.

C. To the extent any portion of the Property is to be zoned and used for residential purposes, ANNEXOR agrees to enter into an agreement with the appropriate School District to provide for dedication to the District of an amount of land equal to four percent (4%) of the residential property, or cash in lieu of land based upon the value of unimproved, residentially zoned land. Such dedication shall occur prior to the platting of the Property for residential uses. In the event ANNEXOR and School District are unable to reach agreement, at the time of platting, CITY shall require the appropriate dedication or cash in lieu of land in addition to any other dedication provided herein.

D. ANNEXOR agrees that lands to be dedicated for public purposes shall include all site and public improvements, including but not limited to water and sewer facilities to the perimeter of such site, curb, gutter, streets and sidewalks adjacent to the site, as applicable. If such improvements are not in place, appropriate assurance of completion shall be provided to CITY at the time of conveyance.

E. Conveyance of land by ANNEXOR to CITY shall be in parcels of not less than two (2) acres. Land for public purposes shall be conveyed to CITY by ANNEXOR by plat or warranty deed at the sole option of CITY. At the sole option of CITY, ANNEXOR may donate public use sites to CITY in parcels of less than two (2) acres.

F. Public lands located in the 50-year flood plain shall not receive public land donation credit. Public land donations located outside of the 50-year flood plain but within a 100-year flood plain as generally shown on the Master Land Use Plan will be accepted by CITY and given a fifty percent (50%) credit toward satisfying the public land dedication requirement if such lands also meet the following criteria:

1. Lands within the 100 year flood plain but outside the 50 year flood plain must be identified as such on topographic maps acceptable for flood plain identification by the CITY storm drainage engineers.

2. Lands must be reasonably usable and accessible for recreation purposes.

In addition to the foregoing, 58.26 acres of the public land donation required pursuant to this Article VI shall be located outside of any designated 100-year flood plain. Should it be determined that any fire station or other municipal facility locations is required within the Property, the site shall be included in the dedication described above. Location of such lands shall be at sites mutually and reasonably agreed upon by the CITY and ANNEXOR. Any sites dedicated for public purposes but disturbed due to grading of adjacent sites or lands within the flood plain disturbed due to storm drainage improvements must be seeded by ANNEXOR with native grasses acceptable to CITY to prevent erosion. ANNEXOR agrees that all lands donated to CITY shall not be used as a borrow or as a fill area unless part of an overall cut and fill plan approved by ANNEXOR and CITY.

G. Upon agreement between CITY and ANNEXOR, CITY may grant the right to ANNEXOR on those lands designated for park and recreational facilities to further improve the same with facilities in addition to standard park development, provided that the amount and cost of said additional improvements shall be subject to further negotiation and agreement between the parties; and provided, further, that CITY shall repay ANNEXOR the costs of said agreed upon additional improvements over a fifteen (15) year period in equal annual installments without interest.

H. Except as set forth above, no additional dedications nor additional fees shall be required by CITY in connection with development of public lands or facilities.

I. ANNEXOR agrees that in the event Special Districts are created for whatever reason, the Districts will not apply for nor request a portion of the Colorado Conservation Trust Funds as supplemented by the State Lottery.

VII

SOIL EROSION

All lands, except those indicated on the General Plan for public purposes, disturbed by ANNEXOR during construction, or not left in a natural state, must be treated by ANNEXOR to prevent erosion. ANNEXOR further agrees to submit an erosion control plan prior to grading. No lands for public purposes shall be disturbed by ANNEXOR in any manner to disrupt the natural landscape, unless part of a cut and fill plan approved by ANNEXOR and CITY.

VIII

ZONING, DESIGN AND INFRASTRUCTURE PHASING

A. CITY recognizes that it is the intent of ANNEXOR to develop the Property in a manner generally consistent with the Master Land Use Plan, which plan is Exhibit "B", attached hereto and incorporated herein by this reference; Exhibit B includes a legal description and map showing approximately 1183.74 acres zoned various land use categories. Further, to the extent reasonably practicable, it is agreed that each commercial and business zoned land use category will be planned as a single planning area with CITY to administer such plan at the time of final site plan and plat approval.

B. The parties mutually agree that the zoning of the lands described herein as shown on Exhibit "B" upon annexation to CITY is a condition precedent to final annexation of the Property.

C. It is anticipated that development of the Property will occur over a period of at least twenty-five (25) years from the date of this Annexation Agreement. In light of such time period for development and because ANNEXOR is responsible under this Agreement for substantial offsite improvements and the payment of significant fees which will require certain long term financial commitments, any time limitation on commencement or completion of construction or any time limitation on development in any ordinance, rule or regulation of CITY (including but not limited to Section 41-44 of the Zoning Ordinances of CITY) shall not be applicable to this Agreement or to the zoning of the Property. Any rezoning change, amendment or modification of the land uses, densities, building heights, setbacks, open space requirements or other matters provided for in the Master Land Use Plan or associated development standards may be made by CITY only in accordance with the charters, city codes and ordinances of the City of Aurora and the laws of the State of Colorado. Except as expressly provided in this Annexation Agreement, all CITY ordinances, regulations and rules uniformly applicable and in effect at the time of site plan and/or plat approval shall be applicable to the development of the Property.

D. Nothing contained herein shall restrict or impair the right of CITY to adopt reasonable citywide noise impact or airport installation compatible use zone (AICUZ) regulations. ANNEXOR agrees to be bound by such regulations presently existing or hereafter enacted by CITY.

E. ANNEXOR acknowledges that development of the Property as zoned will occur in phases as infrastructure (utilities, drainage and transportation facilities) is installed.

F. ANNEXOR agrees to provide a two hundred foot (200') open space buffer on each side of Murphy Creek (four hundred foot [400'] minimum) the total width measured from the centerline thereof which passes through the Property.

G. ANNEXOR agrees that the Property shall be subject to reasonable ordinances passed by CITY pursuant to CITY's police power to protect the public health, property and welfare. Such ordinances may include further referral to specified health and environmental agencies at the time of plat approval, a development phasing plan taking into account recommendations from the Colorado Department of

Health and the United States Environmental Protection Agency, notices to affected property owners, if any, and such other reasonable requirements as CITY shall enact. ANNEXOR agrees that development of the Property will take place only in compliance with said ordinances and upon ANNEXOR's demonstrating to CITY's reasonable satisfaction that such development will not be adverse to the health, safety or welfare of residents and users of the Property. Such demonstration shall take into account the above environmental agency referrals and other relevant information. CITY's ordinances and determinations reasonably adopted shall not be considered a taking by CITY under the United States or Colorado Constitutions, but shall be made pursuant to the police power of CITY. ANNEXOR covenants and agrees to hold CITY harmless from and against all claims, actions and damages of every kind and nature whatsoever arising out of CITY's approval of development of the Property which may be attributable to adverse environmental impacts, if any, caused by parties or entities other than CITY. Nothing contained herein shall restrict or limit ANNEXOR's rights, claims or causes of action against parties, governmental bodies or entities other than CITY who may have caused or contributed to damage to the Property, or whose actions may constitute a taking or condemnation of any of the Property under United States or Colorado law.

IX

SPECIAL DISTRICTS

Subject to CITY's rights of review and approval or denial under the laws of the State of Colorado, CITY shall consider and may approve the creation of one or more districts, including but not limited to special districts, general improvement districts and metropolitan districts, authorized pursuant to Title 31 and Title 32, C.R.S. 1973 ("District(s)"), from time to time as requested by ANNEXOR, for the purpose of the acquisition, construction, installation, financing and/or maintenance of certain capital improvements and facilities, and for the provision of certain services which may be required to develop the Property. Any approval of such districts, when requested by ANNEXOR, shall provide that no District shall levy, charge or collect a sales tax except that that District may enter into an intergovernmental agreement with CITY to fund Extraordinary Public Improvements as described in Article X hereof.

X

EXTRAORDINARY PUBLIC IMPROVEMENTS

A. Subject to the conditions hereafter provided, and the exercise of CITY's sole discretion, CITY agrees to utilize or allow to be utilized, for the purposes described hereafter, an amount not to exceed and measured by Twenty-five Percent (25%) of CITY's share of the three percent (3%) CITY sales taxes generated and collected within the Property. Such amount shall hereafter be referred to as the "Extraordinary Public Improvements Monies." Subject to the limitations described in this Article X, the Extraordinary Public Improvements Monies shall be utilized by CITY, ANNEXOR, or a District or Districts created by ANNEXOR to the extent such Monies are generated and sales taxes collected within the Property, for payment of bonded indebtedness or other financing of major infrastructure and capital improvements within and outside the boundaries of the Property, which improvements are beneficial to CITY generally and which may also be beneficial locally to the Property and its development. Such facilities and improvements may include but shall not be limited to streets, bridges, crossings and street improvements, signage and signalization, connecting roads, interchanges and associated facilities, regional parks and recreation facilities, regional storm drainage facilities and multimodal transportation facilities, studies and improvements as may be required. Payments of the Extraordinary Public Improvement Monies shall be made to CITY, ANNEXOR, or such District(s) as have undertaken responsibility for the improvement upon approval by CITY of the specific improvements to be financed, the method of financing and the amount to be expended. Upon CITY granting such approval, CITY's obligation hereunder shall continue until all debt instruments issued to fund such facilities have been retired, but not later than thirty-five (35) years from the date of annexation. The provisions of this Article X may be implemented pursuant to an intergovernmental agreement between CITY and the District or Districts contemplated by Article X of this Agreement.

B. If in any year ANNEXOR advances monies for Extraordinary Public Improvements approved by CITY to pay bond principal and interest payments for the improvements described in Article VIII, such funds will be treated as a loan to be repaid no later than thirty-five (35) years from the date such funds are advanced (with ANNEXOR's cost of financing) when monies are available from such sales tax proceeds, and not needed to repay the bonded indebtedness.

C. It is agreed that all funds to be used for the purposes described herein shall be based upon the prior year's actual sales tax collections and shall be utilized for the purposes described herein only when monies are actually collected by CITY to be used hereunder.

XI

GENERAL RESPONSIBILITIES OF CITY OF AURORA

A. Except as otherwise provided herein: (i) to furnish water and sewer service to users of such services within the Property and charge such rates and connection charges as are then applicable generally within CITY; and (ii) to subject the Property only to ordinances, rules and regulations generally applicable throughout the CITY on a non-discriminatory basis. Nothing contained herein shall restrict the right of CITY to reasonably impose different fees and charges where reasonable distinctions and classifications exist.

B. To accept public facilities and all appurtenant structures as soon as these are completed to CITY's specifications, subject to a one year warranty by ANNEXOR or assigns against defective materials and/or workmanship. Notwithstanding the foregoing, ANNEXOR will be responsible for repair of its construction-related damage as described in Article II-D.

C. To assume the repair and maintenance, including but not limited to, street sweeping, snow removal, etc., of any public improvements upon acceptance by CITY. After expiration of the one year warranty period, subject to any sidewalk fee or ordinance of general applicability adopted by CITY; ANNEXOR shall thereafter be relieved of all further obligation or liability in connection therewith.

D. At any time ANNEXOR is required to submit to CITY any plans, specifications, drawings, details or other pertinent data required in connection with any water line, sanitary sewer line, storm drainage, or other utility serving the Property, or any improvements within any dedicated right-of-way on the Property, CITY agrees that so long as such submittal is complete, it shall act expeditiously to approve or disapprove such written submittal in writing, setting forth the items disapproved together with the reasons for such disapproval, within a reasonable time of delivery of notice or receipt thereof to CITY. Any resubmittal shall

be likewise acted on within a reasonable time after receipt thereof by CITY. This section shall not apply to site plan review or other actions of CITY requiring Planning Commission or City Council approval.

E. To use its best efforts in securing construction and maintenance easements from governmental or private entities in order to allow ANNEXOR to fulfill its obligations under this Agreement and to proceed with development of the Property.

F. To cooperate with ANNEXOR in any filings, applications, inspections or other administrative procedures necessary to allow ANNEXOR to fulfill its obligations under this Agreement and to develop its property in accordance with the Master Land Use Plan.

G. Except as to these services and utilities expressly provided for herein, to provide police, fire and other municipal services to the Property as needed and on a phased basis as development progresses to the same extent as those services are provided by CITY throughout CITY; provided, however, that CITY reserves the right to charge an Urban Services Expansion fee pursuant to City Code if development occurs within the Property prior to the time that urban services are extended to the Property, at which time such fee shall cease. In no event shall such fee be charged for the Property beyond January, 1991. It is agreed that CITY reserves the right to contract with other municipalities or quasimunicipal districts for provision of fire services, so long as (i) there is no additional cost to ANNEXOR and (ii) such contract requires provision of services and facilities comparable to those of CITY.

H. Unless otherwise expressly provided herein, not to unreasonably withhold its consent or approval when such consent or approval is required hereunder.

XII

GENERAL PROVISIONS

A. This Agreement shall be recorded with the Clerk and Recorder in Arapahoe County, Colorado and shall run with the land, and shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. Any and all of the rights, duties and obligations of ANNEXOR hereunder may be assigned by ANNEXOR to any person or entity when portions of the Property are leased or conveyed to such persons or entities. In such event, the assignee will

assume all of the rights, duties and obligations of ANNEXOR hereunder as to the portion of the Property so assigned and ANNEXOR shall be relieved from all further liabilities, obligations and duties as to the portion of the Property so leased or conveyed. Further, certain rights and duties of ANNEXOR hereunder may be assigned to the Districts so long as such responsibilities are within the scope of authority of such Districts as approved by CITY. ANNEXOR shall notify CITY not less than annually of such assignments and the name and address of its assignees. It is also agreed that when portions of the Property are dedicated or conveyed to CITY pursuant to this Agreement, the relative responsibilities of CITY and ANNEXOR will be agreed upon as part of the documents of dedication or conveyance.

B. The parties are entering into this Agreement upon the understanding that zoning of the Property as described in Article VIII hereof is a condition to annexation of the Property and that CITY is concurrently approving certain documents submitted with this Agreement including the Master Land Use Plan. If such zoning and documents are not approved by appropriate ordinance in substantial conformance with their submission, ANNEXOR may withdraw their annexation petitions and/or declare this Agreement null and void. If CITY fails to approve the above documents or the zoning of the Property, by appropriate ordinance or resolution, CITY covenants will not object to ANNEXOR disconnecting a portion or all of the Property from CITY under any applicable provisions of Colorado law, or otherwise, and upon such disconnection, CITY shall have no further obligations or responsibilities under this Agreement, and this Agreement shall be void and of no further force or effect. This remedy of disconnection shall be limited to the circumstances specified in this Article XII-B and those provided to ANNEXOR pursuant to Section 31-12-119, Colorado Revised Statutes. In the event of any successful disconnection of all or any portion of the Property from CITY which was initiated by ANNEXOR, CITY shall have no further obligations or responsibilities under this Agreement as to such disconnected Property and this Agreement shall be void and of no further force and effect as to such disconnected portion of the Property.

C. Because it is anticipated by CITY and ANNEXOR that development of the Property will require at least twenty-five (25) years from the date of execution hereof, ANNEXOR shall be allowed that time period to develop the Property pursuant to this Agreement at the end of such twenty-five (25) year period, this Agreement shall terminate and expire twenty-five (25) years from the date of execution hereof. There-

after, so long as the Property is located within the municipal boundaries of CITY, it shall be subject to the uniform ordinances, rules and regulations of CITY generally applicable throughout CITY on a non-discriminatory basis and shall remain zoned in accordance with the Master Land Use Plan, subject to amendments then in effect, if any.

D. Nothing contained in this Agreement shall constitute or be interpreted as a waiver or abnegation of CITY's legislative, governmental or police powers to promote and protect the health, safety, morals, or general welfare of the municipality or its inhabitants. Except with reference to those fees expressly limited herein, this Agreement shall not prohibit the enactment by CITY of any fee which is of uniform or general application.

E. It is understood and agreed by the parties hereto that the remedies provided in Article XII-B of this Agreement are not exclusive and that the parties hereto shall have all available remedies for breach hereof in law or in equity including, but not limited to specific performance and damages.

F. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the Courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

G. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except with consent of ANNEXOR and CITY, there shall be no modification of this Agreement except in writing, executed with the same formalities as this instrument and recorded as required in Article XII-A above. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

H. In the event either party alleges that the other is in default hereunder, the non-defaulting party shall first notify the defaulting party in writing of such default. The defaulting party shall have twenty (20) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its

remedies hereunder. If such default is not of a nature that can be cured in such twenty (20) day period, corrective action must be commenced within said period by the defaulting party and be thereafter diligently pursued.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to place their hands and seals upon this Agreement the day and year first above written.

GUN CLUB PARTNERSHIP,
a Colorado General Partnership,

By _____
General Partner

ANNEXOR

CITY OF AURORA, COLORADO
A Municipal Corporation

By _____
DENNIS CHAMPINE, Mayor

ATTEST:

_____
City Clerk

CITY

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 17 day of June, 1986, by Bill L. Walters as General Partner of Gun Club Partnership, a Colorado General Partnership.

Witness my hand and official seal.

My commission expires: 5-3-89.

Diane M Sutherland
Notary Public

EXHIBIT A - Page 1

Legal Description

Parcel 1:

A parcel of land located in the East 1/2 of Section 24, and the Southeast 1/4 of Section 13, Township 4 South, Range 66 West of the Sixth Principal Meridian, and the South 1/2 of Section 18, Section 19, Township 4 South, Range 65 West of the Sixth Principal Meridian, Arapahoe County, Colorado, being more particularly described as follows;

COMMENCING at the North 1/4 Corner of said Section 24;
THENCE N89°48'42"E along the northerly line of the Northeast 1/4 of said Section 24 a distance of 794.87 feet to the northeasterly right-of-way line of Colorado State Highway No. 30, also being the POINT OF BEGINNING;

THENCE N35°56'09"W a distance of 36.89 feet along said right-of-way to a line 30.00 feet northerly of and parallel with the northerly line of the Southeast 1/4 of said Section 13;
THENCE N89°48'42"E along said northerly line a distance of 1872.24 feet to a point on the westerly line of said Section 18;
THENCE S89°48'33"E along a line 30.00 feet northerly and parallel with the southerly line of the Southwest 1/4 of said Section 18 a distance of 2663.41 feet to the easterly line of the Southwest 1/4 of said Section 18;
THENCE S89°42'56"E along a line 30.00 feet northerly and parallel with the southerly line of the Southeast 1/4 of said Section 18 a distance of 2432.25 feet to a line 210.00 feet westerly of and parallel with the easterly line of the Southeast 1/4 of said Section 18;
THENCE S00°14'16"W along said line a distance of 30.00 feet to the northerly line of said Northeast 1/4;
THENCE S00°21'33"W along a line 210.00 feet westerly of and parallel with the easterly line of the Northeast 1/4 of Section 19, a distance of 2628.09 feet to the southerly line of said Northeast 1/4;
THENCE S00°21'02"W along a line 210.00 feet westerly of and parallel with the easterly line of the Southeast 1/4 of said Section 19 a distance of 2598.11 feet;
THENCE S89°51'03"W along a line 30.00 feet northerly of and parallel with the southerly line of said Southeast 1/4 a distance of 1106.01 feet to a point on the easterly line of the West Half of said Southeast 1/4;
THENCE S00°14'16"W along said easterly line a distance of 30.02 feet to the southerly line of said Southeast 1/4;
THENCE S89°51'03"W along said southerly line a distance of 1315.95 feet to the South 1/4 Corner of said Section 19;
THENCE S89°55'21"W along the southerly line of the Southwest 1/4 of said Section 19 a distance of 2067.53 feet;
THENCE N00°00'22"W a distance of 238.74 feet;

THENCE S89°55'21"W a distance of 623.55 feet to the westerly right-of-way line of Colorado State Highway No.30, also being 50.00 feet westerly and parallel with the easterly line of the Southeast 1/4 of said Section 24;
THENCE N00°00'22"W along said right-of-way line a distance of 1066.04 feet;
THENCE S89°51'55"W along a line perpendicular to the westerly line of said Southeast 1/4 a distance of 2585.85 feet to the westerly line of said Southeast 1/4;
THENCE N00°08'05"W along said westerly line a distance of 1337.18 feet to the center of Section 24;
THENCE N89°50'28"E along the southerly line of the Northeast 1/4 of said Section 24 a distance of 2485.44 feet to the northeasterly right-of-way line of Colorado State Highway No. 30;
THENCE along said Northeasterly right-of-way line the following two (2) courses:

1.) Along the arc of a curve to the left having a central angle of 17°16'12", a radius of 3870.00 feet, an arc length of 1166.49 feet, a chord bearing N27°18'01"W a distance of 1162.08 feet;
2.) THENCE S35°56'09"W a distance of 1983.00 feet to the POINT OF BEGINNING.

Containing 754.059 acres, more or less.

Parcel 2:

A parcel of land located in the Southeast 1/4 of Section 24, and the East 1/2 of Section 25, Township 4 South, Range 66 West of the Sixth Principal Meridian, and the Southwest 1/4 of Section 19, and Section 30, Township 4 South, Range 65 West of the Sixth Principal Meridian, Arapahoe County, Colorado, being more particularly described as follows;

COMMENCING at the Northeast Corner of said Section 30;
THENCE S89°50'59"W along the northerly line of the Northeast 1/4 of said Section 30 a distance of 1315.96 feet to the easterly line of the West 1/2 of said Northeast 1/4 also being the POINT OF BEGINNING;
THENCE S00°14'16"W along said easterly line a distance of 2649.59 feet to the southeast corner of said West 1/2;
THENCE S00°13'38"W along the easterly line of the West 1/2 of the Southeast 1/4 of said Section 30 a distance of 2437.72 feet;
THENCE S89°57'21"W along a line 210.00 feet northerly and parallel with the southerly line of the West 1/2 of said Southeast 1/4 a distance of 1312.52 feet to the westerly line of the West 1/2 of said Southeast 1/4;
THENCE S89°56'08"W along a line 210.00 feet northerly and parallel with southerly line of the Southwest 1/4 of said Section 30 a distance of 2574.79 feet to the easterly right-of-way line of Colorado State Highway No. 30.;
THENCE S89°56'08"W a distance of 100.00 feet to the westerly right-of-way line of Colorado State Highway No. 30 also being 50.00 feet westerly of the easterly line of the Southeast 1/4 of Section 25;
THENCE along said southwesterly right-of-way line the following three (3) courses:

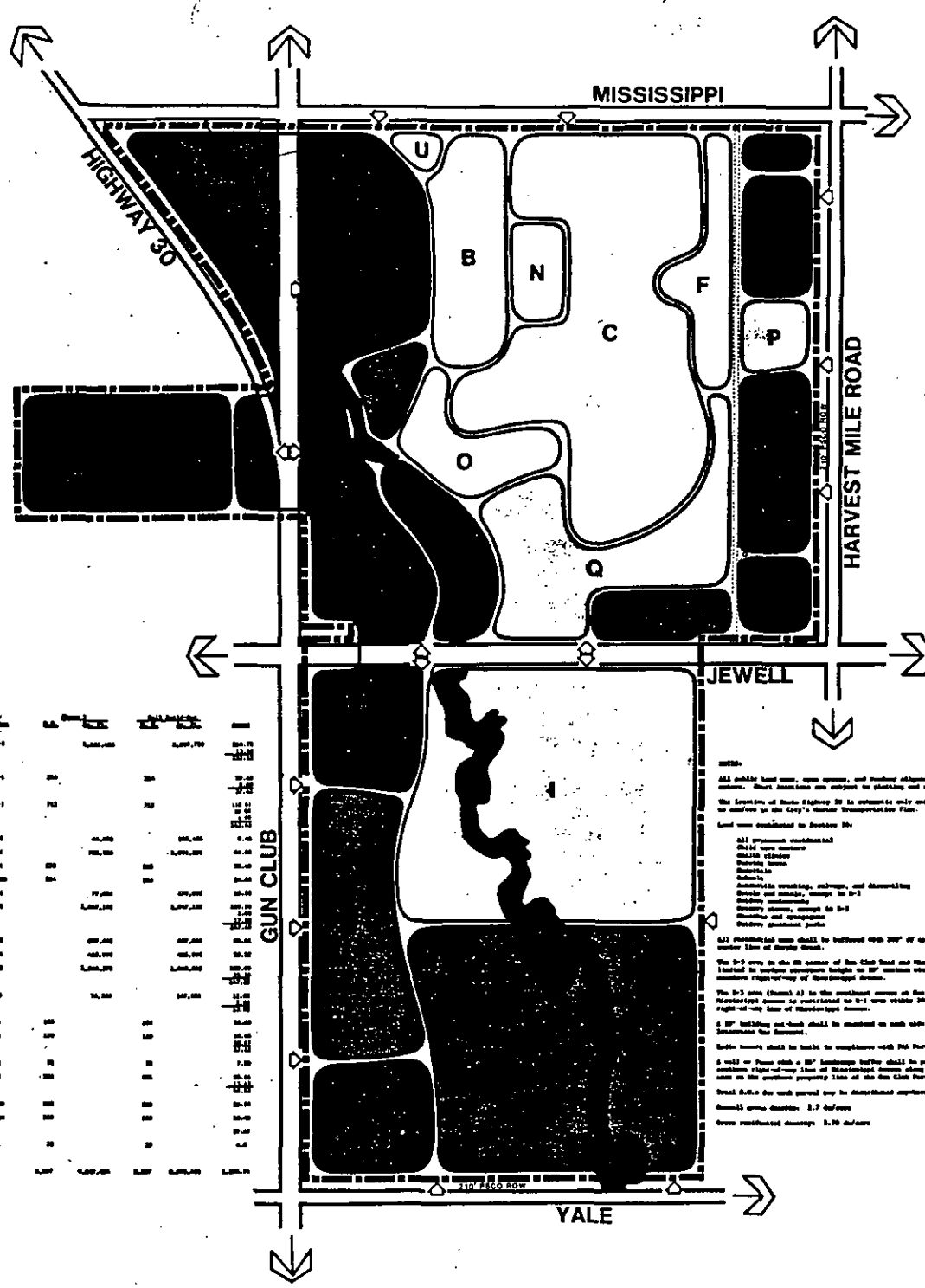
1.) N00°01'10"E along a line 50.00 feet westerly of and parallel with the easterly line of said Southeast 1/4 a distance of 2434.82 feet to the northerly line of said Southeast 1/4;
2.) THENCE N00°00'09"E along a line 50.00 feet westerly of and parallel with the easterly line of the Northeast 1/4 of said Section 25 a distance of 2649.32 feet to the northerly line of said Northeast 1/4;
3.) THENCE N00°00'22"W along a line 50.00 feet westerly and parallel with the easterly line of the Southeast 1/4 of said Section 24 a distance of 238.83 feet;

THENCE N89°55'21"E a distance of 100.00 feet to the easterly right-of-way of Colorado State Highway No. 30, also being 50.00 feet easterly of the westerly line of the Southwest 1/4 of said Section 19;

THENCE S00°00'22"E along said easterly right-of-way line a distance of 208.72 feet to a line 30.00 feet northerly of and parallel with the southerly line of said Southwest 1/4;

THENCE N89°55'21"E along said line a distance of 523.55 feet;
THENCE S00°00'22"E a distance of 30.00 feet to the northerly line of the Northwest 1/4 of said Section 30;
THENCE N89°55'21"E along said northerly line a distance of 2067.53 feet to the North 1/4 corner of Section 30;
THENCE N89°51'03"E along the northerly line of the Northeast 1/4 of said Section 30 a distance of 1315.95 feet to the POINT OF BEGINNING.

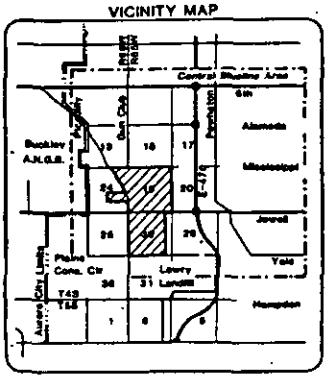
Containing 467.487 acres, more of less.



LAND USE and ZONING PLAN

LAND USE	NET AC.	D.U.	D.U./AC.	%
RESIDENTIAL	348.42			29
R-1	216.10	1419	7.26	
R-2	62.31	823	14.62	
R-M	70.01	1246	20.00	
COMMERCIAL	282.90			24
B-1	26.06			
B-2	218.72			
	38.22*			
HOTEL/SERVICE				
C-O	78.53			6
OFFICE/BUSINESS PARK				
M-O	146.58			13
INDUSTRIAL	188.06			16
M-1	66.00			
M-2	122.06			
PUBLIC DEDICATION	143.26			12
Parks	86.00			
Floodplain	66.00			
School Site	20.00			
Fire Station	1.00			
Open	21.17			
TOTAL:	1183.74	3287		

VICINITY MAP



REVISED: FEBRUARY 25, 1986

Gun Club Partnership

The Bill L. Walters Companies

Land Development Division

Planning Consultant:

King & Associates, Inc.
90 Madison, Suite 102
Denver, Colorado 80206
(303-333-3834

GOLF COURSE DEVELOPMENT AGREEMENT

THIS AGREEMENT, made and entered into this 5th day of December, 1995, by and between the CITY OF AURORA, home rule municipal corporation of the State of Colorado ("City"), acting on its own behalf and by and through its Golf Enterprise ("Golf Enterprise") and its Utility Enterprise ("Utility Enterprise"), G.C. North LLC, a Wyoming limited liability company ("GC North"), and Murphy Creek L.L.C., a Wyoming limited liability company ("Murphy Creek"). GC North and Murphy Creek may be collectively referred to herein as "Developers" or individually as a "Developer." City, Golf Enterprise, Utility Enterprise and Developers may be collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Section 8-3 of the Charter mandates that the City shall provide for a community recreation program and the equipping and maintaining of recreational facilities; and

WHEREAS, pursuant to this section of the Charter, the City owns and operates a Golf Enterprise within the meaning of Article X, Section 20(2)(d) of the Colorado Constitution; and

WHEREAS, GC North is the owner of certain property described in **Exhibit A-1** of this Agreement (the "North Parcel"); and

WHEREAS, Murphy Creek is the owner of certain property described in **Exhibit A-2** of this Agreement (the "South Parcel"); and

WHEREAS, said properties have been annexed to and are within the boundaries of the City by virtue of that certain Annexation Agreement, dated April 14, 1986, and recorded on April 30, 1987, in the office of the Clerk and Recorder of Arapahoe County at Reception No. 2829334 (the "Annexation Agreement"); and

WHEREAS, to facilitate development of the properties described on **Exhibits A-1 and A-2** (which, excluding the Golf Course Property (defined below) may be referred to as the "Development"), Developers and the City have entered into that certain Amendment to Annexation Agreement, dated 12/5/95 (the "Annexation Agreement Amendment"); and

WHEREAS, Developers have offered to convey land to the Golf Enterprise in exchange for the Golf Enterprise's commitment under this Agreement to construct an 18-hole public golf course and related facilities on such land; and

WHEREAS, in furtherance of the Charter mandate to provide recreational facilities to its citizens, the City and the Golf Enterprise hereby find and determine that it is in the best interests of the citizens of the City to accept the conveyance of land from the Developers and to commit to construct a golf course and related facilities thereon, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises, and agreements of each of the parties hereto, the City, the Golf Enterprise, the Utility Enterprise and the Developers hereby agree as follows:

Section I.
CONVEYANCE OF GOLF COURSE PROPERTY

1. Conveyance of Property.

(a) Developers shall convey all right, title, and interest in and to approximately ~~209~~ 236 acres of land (the "Golf Course Property") to the Golf Enterprise for the express purpose of constructing, equipping for operation and operating an 18-hole public golf course (the "Golf Course") with clubhouse and practice facilities and golf cart and pedestrian tunnels (collectively the "Golf Course Facilities"). Such conveyance shall be without cost to or compensation from the Golf Enterprise.

(b) Developers, at their sole cost and expense, shall cause a map of the Golf Course Property to be made by a duly qualified and licensed surveyor which delineates the boundaries of the Golf Course Property and the location of any and all easements, rights-of-way, and improvements thereon (the "Golf Course Map"). The Golf Course Map shall depict substantially the property shown on **Exhibit B**, which is attached hereto and incorporated herein by this reference, shall set forth a correct legal description of the Golf Course Property and shall be provided to the Golf Enterprise as soon as practicable after the date of final Council action approving this Agreement (the "Approval Date"). Legal descriptions of the Golf Course Property as established by the Golf Course Map shall be attached hereto as Exhibits.

2. Method of Conveyance. On or before the "Closing Date" (which shall be the 10th day following the Developers' delivery of the Golf Course Map to the Golf Enterprise), Developers shall convey the Golf Course Property to the Golf Enterprise by means of special warranty deeds, subject only to those liens, encumbrances, and title exceptions which are acceptable to the Golf Enterprise and which are shown on **Exhibit C**, attached hereto and incorporated herein by this reference ("Permissible Exceptions"). The forms of the deeds to be conveyed are attached hereto as **Exhibit D-1 and D-2** and are incorporated herein by reference. At a minimum, said deeds

shall contain provisions requiring that the Golf Course Facilities will be constructed on the Golf Course Property and that the same will be used for an 18-hole public golf course with attendant facilities; provided, however, that the Golf Course Property shall not be deemed to be granted for park purposes within the meaning of Section 10-6 of the City Charter. As a condition precedent to Developers' obligation to convey the Golf Course Property to the Golf Enterprise and the Golf Enterprise's obligation to accept such conveyance, Developers, at their sole cost and expense, agree to (a) remove all liens, encumbrances, and title exceptions against the Golf Course Property which are not Permissible Exceptions, (b) obtain an ALTA title insurance policy (or an unconditional commitment for the issuance of a title insurance policy) for the Golf Course Property from Land Title Guarantee Company in the amount reflected in the Appraisal (defined below), with the City and the Golf Enterprise as the named insureds thereunder as their interests may appear in the Golf Course Property, and (c) obtain and deliver to the Golf Enterprise the materials described in **subparagraph 5(c) of this Section I.**

3. Post-Conveyance Studies; Substitution of Land; Platting.

(a) (i) On or before the 31st day following the Approval Date, Developers, at their sole cost and expense, shall commence and thereafter diligently complete preparation of (A) a master drainage plan for the Development and the Golf Course Property, as described in the Annexation Agreement Amendment (the "Master Drainage Plan"), (B) a wetland study for the Development and the Golf Course Property, (C) a flood plain study for the Development and the Golf Course Property, (D) an endangered species survey of the Golf Course Property, and (E) an archaeological study of the Golf Course Property, and shall deliver copies of such studies (collectively, the "Post Conveyance Studies") to the Golf Enterprise when complete.

(ii) On or before the 31st day following the Approval Date, the Golf Enterprise, at its sole cost and expense shall commence, and thereafter diligently complete, preparation of the Golf Course Routing and Grading Plan (as defined in **Section II, Paragraph 1**). The Golf Enterprise and the Developers shall work together to ensure that the Master Drainage Plan and the Golf Course Routing and Grading Plan are consistent.

(iii) On or before the tenth day following receipt by the Golf Enterprise of copies of the Post Conveyance Studies, the Golf Enterprise shall commence and thereafter diligently complete the necessary process to obtain a certificate to the appropriate federal and state authorities that no critical habitat for any endangered or threatened species or historical, prehistorical or archaeological resources may be found on the Golf Course Property which would prevent, hinder or delay the construction of the Golf Course Facilities.

(iv) The Developers shall select and direct the consultants undertaking such Post Conveyance Studies. The Golf Enterprise shall reimburse Developers for one-half of the reasonable and actual cost of the Post Conveyance Studies within 45 days following receipt of paid invoices from Developers.

(b) (i) The Parties acknowledge that the results of the Post Conveyance Studies may necessitate, in the reasonable judgment of the Golf Enterprise, changes in the Golf Course Routing and Grading Plan and, therefore, in the boundaries of the Golf Course Property. In such event, , the Developer which has conveyed the affected land and the Golf Enterprise shall meet and work, in good faith, toward a mutually agreeable substitution of sufficient land owned by such Developer and adjacent to the Golf Course Property which is a suitable substitute for such construction and which can be accommodated in the Final Golf Course Design. The Parties further acknowledge that, in order to accommodate the changes in the Golf Course Routing and Grading Plan, the total acreage of the Golf Course Property after the substitution process described above may exceed or be less than the 209 acres set forth in **Section I, Paragraph 1.** The process of negotiation toward and determination of such substitution of land shall be completed no later than 120 days following the Golf Enterprise's completion and acceptance of the Golf Course Routing and Grading Plan (the "Legal Description Resolution Date"). The foregoing notwithstanding, the City may withhold approval of any and all subdivision plats for the Development until such time as Developers and the Golf Enterprise have completed the substitution process described herein; provided, however, that if such process is not successfully completed by the Legal Description Resolution Date, the City and the Golf Enterprise shall return the Golf Course Property to Developers pursuant to the process described in **Section I, Paragraph 6.** The conveyance of such land shall be made in accordance with and subject to all of the provisions set forth in this Agreement. A description of such land shall be attached to this Agreement by addendum hereto and incorporated herein by reference.

(ii) In the event Developers, or either of them, determine that the alignment of the Golf Course Property is such that it does not maximize the potential for golf course frontage residential development, as determined in such Developer's reasonable judgment, then such Developer and the Golf Enterprise shall meet and work, in good faith, toward a mutually agreeable substitution of sufficient land owned by such Developer and adjacent to the Golf Course Property which is a suitable substitute for such construction and which can be accommodated in the Final Golf Course Design; provided, however, that no substitutions of land pursuant to this **subparagraph (b)(ii)** shall be permitted after the Legal Description Resolution Date. The conveyance of such land shall be made in accordance with and subject to all of the provisions set forth in this Agreement. A description of such land

shall be attached to this Agreement by addendum hereto and incorporated herein by reference.

(iii) Should the construction of the Golf Course Facilities on all or any portion of the Golf Course Property (after the substitution process described in **subparagraph (b)(i)**) be rendered unfeasible in the reasonable judgment of the Golf Enterprise due to (A) the inability to secure any necessary federal, state, or local permits, licenses, or approvals, (B) any conditions imposed by or as a result of such permits, licenses, or approvals, (C) the presence or alleged presence of Hazardous Substances (defined below) on a portion of the Golf Course Property, (D) conditions imposed as a result of the Development, or (E) the inability to implement a material provision of the Final Golf Course Design (defined below), the Developer which has conveyed the affected land and the Golf Enterprise shall meet and work, in good faith, toward a mutually agreeable substitution of sufficient land owned by such Developer and adjacent to the Golf Course Property which is a suitable substitute for such construction and which can be accommodated in the Final Golf Course Design. The conveyance of such land shall be made in accordance with and subject to all of the provisions set forth in this Agreement. A description of such land shall be attached to this Agreement by addendum hereto and incorporated herein by reference. For purposes of this Agreement, a "local permit" shall not include any permit issued by the City or any of its departments, agencies, or enterprises.

(c) Within ten days following the Legal Description Resolution Date, the Golf Enterprise shall commence, and thereafter diligently complete a subdivision plat of the Golf Course Property, meeting all requirements of the City for legal subdivision of the Golf Course Property (the "Golf Course Plat"). Developers shall reimburse the Golf Enterprise for one-half of the reasonable and actual cost of the Golf Course Plat (but not more than $11,000.00) within 45 days following receipt of paid invoices from the Golf Enterprise.

4. Appraisal. Subject to acceptance of the same by the Golf Enterprise, the value of the Golf Course Property shall be determined by an appraisal (the "Appraisal") furnished by Developers prior to the Closing and prepared by THK and Associates, provided that the Appraisal may be revised and recertified after any substitution of land pursuant to **Section I, Paragraph 3**. Within ten days following the written request by Developers, or either of them, City and the Golf Enterprise shall complete, execute and Deliver to Developers, a Schedule of Noncash Charitable Contributions (IRS Form 8283). The Parties agree that the total area of the Golf Course Property exceeds the acreage which Developers would ordinarily be required to dedicate as public land under the ordinances, rules, and regulations of the City. The Parties further agree that the Golf Course Property is in excess of

any other land which is required by law to be dedicated for public use, such as parks and schools, or for any other public purpose.

5. Condition of Land; Environmental Assessment.

(a) Each Developer hereby represents and warrants, solely with respect to that portion of the Golf Course Property each is conveying hereunder, that it does not have actual knowledge of any use, release, leak, discharge, spill, disposal, emission, storage, treatment, or transportation of Hazardous Substances that has occurred in or on said portion of the Golf Course Property. Notwithstanding the foregoing, the City and the Golf Enterprise acknowledge that the South Parcel is in close proximity to an existing and operating land fill operation known as the "Lowry Land Fill." Any use, release, leak, discharge, spill, disposal, emission, storage, treatment, or transportation of Hazardous Substances from or related to the Lowry Land Fill is expressly excluded from the representations and warranties of this Paragraph. As used herein, "Hazardous Substances" mean those substances which are regulated by or form the basis of liability under any federal, state, or local statute, law, ordinance, rule, regulation, or order relating to the environment, natural resources, or human health and safety, or any other substance which has in the past or could in the future constitute a health, safety, or environmental hazard to any person or property.

(b) (i) The City and the Golf Enterprise acknowledge each acknowledge that they have received, reviewed and approved a Phase II Environmental Assessment of the South Parcel (the "Environmental Studies"), and that no further environmental assessments or evaluations of the South Parcel will be necessary. As to the environmental conditions of the Golf Course Property, the City and the Golf Enterprise accept the Golf Course Property and the environmental conditions described in the Environmental Studies in its present status "as is," "where is," with all faults and without any representation, warranty or covenant of any kind, type or nature, except as set forth in writing in this Agreement.

(ii) The Environmental Studies and the Post Conveyance Studies (collectively, the "Studies") are provided solely as a convenience and neither the City nor the Golf Enterprise will assert any claim or cause of action against Developers, or either of them, arising out of the truth, untruth or incompleteness of such reports or information; the City and the Golf Enterprise will independently evaluate such reports and information, and, among other things, the environmental condition of the Golf Course Property. The City and the Golf Enterprise further acknowledge and agree that they are taking title to the Golf Course Property solely upon the basis of their investigation and not on the basis of any representation, express or implied, written or oral, made by Developers, or either of them or their agents, partners, co-venturers, or employees, except those set

forth in writing in this Agreement. Without limiting the generality of the foregoing, Developers make no warranty as to the sufficiency of the Golf Course Property for purposes of the City or the Golf Enterprise, the square footage or acreage contained within the Golf Course Property, the sufficiency or completeness of any plans for the Golf Course Property.

(c) On or before the Closing Date, Developers shall obtain and have issued for the North Parcel (i) a Phase I Environmental Assessment (and, if warranted in the reasonable opinion of the Golf Enterprise, a Phase II Environmental Assessment) prepared in the name of the City and the Golf Enterprise, (ii) an update of the Environmental Study described in **subparagraph 5(b)**, and (iii) a letter allowing the City and the Golf Enterprise to rely on the Environmental Studies described in **subparagraph 5(b)**. The materials described in this **subparagraph 5(c)** shall be considered part of the "Environmental Studies" for all purposes of this Agreement.

6. Return of Golf Course Property to Developers. If, at any time prior to the commencement of construction of the Golf Course Facilities (a) the Golf Enterprise is unable to secure the necessary federal, state, and local permits, licenses, and approvals to construct the Golf Course Facilities on the Golf Course Property or on any land which is or may be substituted therefor pursuant to **Paragraph 3 of this Section I**, (b) the estimated cost of constructing the Golf Course Facilities, including the cost of any environmental remediation required of the Golf Enterprise or cost of complying with conditions imposed upon such construction by or as the result of such permits, licenses, and approvals, exceeds $9,000,000.00, (c) the construction of the E-470 Highway reasonably appears unlikely to commence or proceed to completion, or (d) the Parties are unable, despite their best efforts, to successfully complete the process described in **Section I, Paragraph III**, then, in any such event, the Golf Enterprise may elect to (x) convey the Golf Course Property to Developers by means of special warranty deeds, subject only to Permissible Exceptions, and (y) terminate this Agreement, in which event all rights and obligations hereunder shall be of no further force and effect (except for the reimbursement of funds among the parties), and (z) the City shall rezone the Development and the Golf Course Property to the zone designation which existed prior to the City's adoption of the General Development Plan for the Development (as described in the Annexation Agreement Amendment), and all obligations of Developers to construct amenities and/or facilities as set forth in the General Development Plan shall be of no further force or effect.

Section II.
OBLIGATIONS OF THE GOLF ENTERPRISE

1. Golf Course Design.

(a) Except as set forth in **Section I, Paragraph 6** and **Section II, Paragraph 9**, within 31 days following the Approval Date, the Golf Enterprise and the City shall commence, and thereafter diligently pursue to completion (but in no event later than 150 days after commencement of such procedure), the established City contract procedure to let a contract or contracts for the design (collectively, the "Design Contract") of the Golf Course Facilities (the "Final Golf Course Design"), including the Golf Course routing plan and the grading plan for the Golf Course Facilities (the "Golf Course Routing and Grading Plan"). The Golf Enterprise shall withhold final acceptance of the Golf Course Routing and Grading Plan until completion of the Post Conveyance Studies, which completion shall occur no later than May 15, 1996.

(b) The Final Golf Course Design shall be subject to review and comment by Developers; provided, however, that the Golf Enterprise shall retain the sole authority to approve such Final Golf Course Design, so long as the Golf Course Grading and Routing Plan is consistent with Developers' grading plan for the Development. In the event either Developer requests any change in the Final Golf Course Design after the date of its approval by the Golf Enterprise which results in additional costs to the Golf Enterprise, the Developer requesting the change agrees to bear the entire cost of such change and, prior to the making of such change, shall deposit with the Golf Enterprise sufficient funds to make such change.

2. Golf Course Financing and Construction.

(a) The Golf Enterprise covenants and agrees to finance, construct, fully equip and operate the Golf Course Facilities on the Golf Course Property in the manner and to the extent provided by this Agreement.

(b) The construction and equipping of the Golf Course Facilities shall be financed initially by the Golf Enterprise from the proceeds of a revenue note of at least $5,100,000.00 to be issued by the Golf Enterprise and sold to the Utility Enterprise Wastewater Fund, which financing shall occur no later than December 31, 1995 (the "Initial Financing"). Any additional financing needed for the construction and equipping of the Golf Course Facilities shall come from the unappropriated fund balance and additional revenues of the City's Golf Enterprise Fund. Without limiting the generality of the foregoing, if the unappropriated fund balance and additional revenues of the Golf Enterprise Fund, together with the proceeds of the Initial Financing, are not sufficient to permit the funding of the Construction Contract (as defined in **Section II, Paragraph 2(c)**) in time to begin construction of the Golf Course Facilities by the deadline set

forth in **Section II, Paragraph 4,** then the Golf Enterprise shall issue and sell such additional revenue notes as are necessary to fund such Contract. The Utility Enterprise, by execution of this Agreement, agrees to fund the Initial Financing as set forth herein, and agrees that such obligation may be enforced by Developers by an action for specific performance or damages or both. The proceeds of the Initial Financing and, if necessary, any subsequent financing of the Golf Course Facilities undertaken by the Golf Enterprise, together with any portion of the unappropriated fund balance and additional revenues of the Golf Enterprise Fund designated for the purpose of financing the Golf Course Facilities, shall be used solely and exclusively for the construction and equipping of the Golf Course Facilities. The parties hereto agree that the Golf Enterprise may refinance the Golf Course Facilities in the future; provided, however, that the proceeds of any such refinancing shall be used solely for constructing and equipping the Golf Course Facilities to the extent that any of the costs of such construction and equipping remain unexpended at the time of such refinancing. Notwithstanding the foregoing, the Golf Enterprise may obtain the Initial Financing in a manner and from a source other than those described in this Paragraph, provided that (i) the same does not delay the construction and equipping of the Golf Course Facilities or otherwise impair the ability of the Golf Enterprise to fulfill its obligations pursuant to this Agreement, (ii) that the same can be demonstrated to the reasonable satisfaction of Developers, and (iii) that the proceeds of such Initial Financing shall be used solely and exclusively for the construction and equipping of the Golf Course Facilities. If the Golf Enterprise obtains the Initial Financing as set forth in the previous sentence, the same shall be deemed a discharge of the obligations of the Utility Enterprise pursuant to this **subparagraph 2(b)**.

(c) Except as set forth in **Section I, Paragraph 6** and **Section II, Paragraph 9**, following approval by the Golf Enterprise of the Final Golf Course Design, the City and the Golf Enterprise shall commence, and thereafter diligently pursue to completion, the established City contract procedure to enter into a contract or contracts for the construction of the Golf Course Facilities (the "Construction Contract") with a general contractor or contractors, which shall provide as follows: (i) construction shall be complete no later than May 1, 1999, and earlier if possible; and (ii) the contractor shall post a payment and performance bond for completion of the Golf Course Facilities, designating Developers as co-obligees (secondary to the Golf Enterprise) thereunder.

3. Federal, State, and Local Permits. The Golf Enterprise agrees to use its best efforts to secure all federal, state, and local permits, licenses, and approvals which are required by law to be issued prior to the construction of Golf Course Facilities on the Golf Course Property. The Golf Enterprise further agrees to perform any and all flood plain and wetland mitigation measures

which may be required as a condition of such permit, license, or approval and as a result of constructing Golf Course Facilities on the Golf Course Property; provided however that Developers shall reimburse the Golf Enterprise for the reasonable and actual cost of the flood plain and wetland mitigation measures described in this **Paragraph 3** within 45 days following receipt of paid invoices from the Golf Enterprise. **Responsibility for the costs of constructing** and installing basin-wide storm drainage facilities shall be apportioned between the City and the Developers as provided in the Master Drainage Plan.

4. Timing of Construction. Except as set forth in **Section I, Paragraph 6** and **Section II, Paragraph 9**, the Golf Enterprise shall (a) begin construction of the Golf Course Facilities on the next available construction season after all necessary permits, licenses, and approvals are issued, but no later than October 15, 1997, and (b) complete construction and equipping of the Golf Course Facilities no later than May 1, 1999.

5. Golf Course Operation. The Golf Course Facilities shall be the property of the City, acting by and through the Golf Enterprise, and their operation shall be subject to the sole management and control of the Golf Enterprise; provided, however, that the Golf Enterprise agrees that said Golf Course Facilities shall be operated as such following their construction and thereafter. Neither Developers, their principals, agents, or employees, nor any owner of property within or resident of the Development shall be given any preference in the use of the Golf Course Facilities or in the rates, fees, or other charges imposed for such use beyond that which is customarily afforded to residents and non-residents of the City by the Golf Enterprise.

6. Other Golf Courses. Neither the City nor the Golf Enterprise nor any other subdivision of the City shall construct or agree to undertake the development of any other golf courses within the boundaries of the City and south of 6th Avenue (other than the Saddlerock Golf Course) prior to opening of the Golf Course Facilities for public play.

7. Obligation of Golf Enterprise. Any and all obligations of the Golf Enterprise under this Agreement shall be the sole obligation of said Golf Enterprise and, as such, shall not constitute a general obligation or other indebtedness of the City or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional, statutory, or charter limitation. In the event of a default by the Golf Enterprise on any of its obligations under the terms of this Agreement, Developers shall have no recourse against any of the funds of the City except for the Golf Enterprise Fund and, then, only to the extent that moneys in such fund are (a) the proceeds of the sale of any revenue bonds, notes or other obligations issued by the Golf Enterprise for the purpose of

financing the Golf Course Facilities pursuant to **Section II, subparagraph 2(b)**, and/or (b) that portion of the unappropriated fund balance and additional revenues of the Golf Enterprise Fund designated for the purpose of financing the Golf Course Facilities pursuant to **Section II, subparagraph 2(b)**, and/or (c) income from green fees, rentals, concessions or any other rates, fees or charges for the services furnished by, or the direct or indirect use of the Golf Course Facilities, and/or (d) the proceeds of any sale or lease of the Golf Course Facilities; provided, however, that Developers' recourse against any of the moneys identified in **clauses (b), (c) or (d)** shall be on a basis subordinate and junior to that of the holders of any bonds of the Golf Enterprise. Notwithstanding the foregoing, the Golf Enterprise hereby covenants that all funds appropriated for the construction of the Golf Course Facilities (including, but not limited to, those funds described in **Section II, subparagraph 2(b)**) shall be used solely for that purpose, subject only to the provisions of **Section II, Paragraph 9**.

8. Obligation of Utility Enterprise. Any and all obligations of the Utility Enterprise under this Agreement shall be the sole obligation of said Utility Enterprise and, as such, shall not constitute a general obligation or other indebtedness of the City or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional, statutory, or charter limitation. In the event of a default by the Utility Enterprise on any of its obligations under the terms of this Agreement, Developers shall have no recourse against any of the funds of the City except for the Utility Enterprise Wastewater Fund and then only up to the amount of the Golf Enterprise revenue note which the Utility Enterprise has agreed to purchase pursuant to **Section II, subparagraph 2(b)**; provided, however, that Developers' recourse against the Utility Enterprise Wastewater Fund shall be on a basis subordinate and junior to that of the holders of any bonds, notes or other obligations issued by the Utility Enterprise or the City and payable from the revenues of the Wastewater Fund, after the payment of said bonds, notes or other obligations.

9. No Golf Enterprise Responsibility for External Causes. The Golf Enterprise shall not be responsible for and there shall be no remedy at law or in equity of any kind against the Golf Enterprise if the financing, construction, or operation of the Golf Course Facilities is prevented or delayed for any reason beyond the reasonable control of the Golf Enterprise, other than financial inability, including, but not limited to, acts of God, acts of war, civil commotions, riots, strikes, lockouts, acts of the federal or state government, accident, fire, water damages, flood, earthquake, inclement weather, soil conditions or other natural conditions, the threat, filing, or commencement of any claim, action, or lawsuit involving the financing, construction, or operation of the Golf Course Facilities, the passage of any voter-initiated Constitutional amendment, state statute, or local ordinance, any

challenge to the Golf Enterprise's ability to construct the Golf Course Facilities brought pursuant to a voter-initiated Constitutional amendment, state statute, or local ordinance, or any other federal, state, or local law, rule, or regulation, or the breach or default of any obligation hereunder by either Developer. In the event that the external cause or causes of any delay are resolved so that the Golf Enterprise is able to finance, construct, or operate the Golf Course Facilities, the Golf Enterprise agrees to resume said financing, construction, or operation provided that all dates set forth in this Agreement are extended to account for the delay.

Section III.
OBLIGATIONS OF THE DEVELOPERS

1. Payment of Operating Deficits and Lot Premiums.

(a) In consideration of the various tangible and intangible benefits Developers will receive from having a public golf course facility located adjacent to their respective residential developments, Developers hereby agree to reimburse the Golf Enterprise for Operating Deficits (defined below) and to pay certain Lot Premiums (defined below), each to the extent set forth in this **Section III, Paragraph 1.**

(b) For purposes of this **Section III, Paragraph 1:**

(i) an "Operating Deficit" shall mean the amount by which the costs of operating the Golf Course Facilities after the Golf Course is open for public play (including debt service expenditures, not exceeding the City's best cost of funds, for internal or external financing of the Golf Course Facilities) exceeds revenues generated by the Golf Course Facilities (excluding funds contributed by the City or the Golf Enterprise);

(ii) "single-family residential unit" shall mean any residential unit developed at a density equal to or less than 15 dwelling units per acre; and

(iii) "multi-family residential unit" shall mean any residential unit developed at a density greater than 15 dwelling units per acre.

(c) On each of the first, second and third anniversaries of the opening of the Golf Course for public play, Developers shall pay to the Golf Enterprise (as a joint and several obligation of the Developers) the lesser of (i) the amount of the Operating Deficit funded by the Golf Enterprise in the prior 12 months, or (ii) $200,000.00; provided, however, that Developers shall receive a credit against any sum due pursuant to this **subparagraph 2(c)** for any Lot Premium (defined below) paid prior to Developers' payment

pursuant to this **subparagraph 2(c)**, but only to the extent that such Lot Premium payment has not been previously credited against a payment under this **subparagraph 2(c)**.

(d) On each of the fourth and fifth anniversaries of the opening of the Golf Course for public play, Developers shall pay to the Golf Enterprise (as a joint and several obligation of the Developers) the lesser of (i) the amount of the Operating Deficit funded by the Golf Enterprise in the prior 12 months, or (ii) $60,000.00; provided, however, that Developers shall receive a credit against any sum due pursuant to this **subparagraph 2(d)** for any Lot Premium (defined below) paid prior to Developers' payment pursuant to this **subparagraph 2(d)**, but only to the extent that such Lot Premium payment has not been previously credited against a payment under this **subparagraph 2(d)** or under **subparagraph 2(c)**.

(e) On the 180th day following the fifth anniversary of the opening of the Golf Course for public play, Developers shall pay to the Golf Enterprise (as a joint and several obligation of the Developers) the lesser of (i) the amount of the Operating Deficit funded by the Golf Enterprise in the prior 180 days, or (ii) $30,000.00; provided, however, that Developers shall receive a credit against any sum due pursuant to this **subparagraph 2(e)** for any Lot Premium (defined below) paid prior to Developers' payment pursuant to this **subparagraph 2(e)**, but only to the extent that such Lot Premium payment has not been previously credited against a payment under this **subparagraph 2(e)** or under **subparagraphs 2(c) or (d)**.

(f) Developers shall pay to the Golf Enterprise (as a joint and several obligation of the Developers) a "Lot Premium" in the amount of $600.00 per single-family residential unit and $400.00 per multi-family residential unit constructed on the Development. The Lot Premium shall be paid to the Golf Enterprise at the time a Certificate of Occupancy is issued by the City for each such unit. Notwithstanding the foregoing, Developers shall receive a credit against Lot Premiums due pursuant to this **subparagraph 1(f)** for all payments of Operating Deficits made by Developers pursuant to **subparagraphs 1(c), (d) and 1(e)**.

2. Property Owner Notification. Developers agree to fully disclose, in advance, the risks commonly associated with the ownership of property adjacent to a golf course to the purchasers of residential units located within 1,000 feet of the Golf Course Property. Developers further agree to obtain, on behalf of the City and the Golf Enterprise, a release from liability from all such purchasers, their successors and assigns a form acceptable to the City and the Golf Enterprise. Each such release shall be deemed a covenant running with the land and shall be recorded in the real property records of the Arapahoe County Clerk and Recorder. Developers understand and agree that the City shall not issue a certificate of occupancy for any residential unit

constructed on their respective properties unless and until Developers (a) make payment in full to the Golf Enterprise of the Lot Premium for such unit pursuant to **Section III, Paragraph 1**, and (b) deliver to the City and Golf Enterprise a release of liability obtained on behalf of the City and the Golf Enterprise from the purchaser of any such unit located within 1,000 feet of the Golf Course Property.

3. Construction of Entrance Road. Developers agree that, as part of their obligations to build roads and streets pursuant to the Annexation Agreement Amendment, to construct and dedicate to the City a two-lane entrance road from Jewell Avenue north to the west end of the spur road providing access to the Golf Course clubhouse and to the Golf Course maintenance building as shown on **Exhibit B** and as provided in the Annexation Agreement Amendment (the "Golf Course Entrance Road"). Developers shall install the Golf Course Entrance Road as a temporary gravel road prior to commencement of construction of the Golf Course Facilities by the Golf Enterprise; provided, however, that Developers shall complete construction of the Golf Course Entrance Road as a permanent two-lane road meeting the requirements of the Annexation Agreement Amendment on or before the first to occur of (a) the date the Golf Course is open for public play, or (b) approval by the City of any subdivision plat for residential development on the Development.

Road required

4. Construction of Pedestrian Tunnels. The parties acknowledge that two pedestrian tunnels under Jewell Avenue, providing access to the golf course are considered part of the Golf Course Facilities to be constructed (and, at such time as Jewell Avenue is widened, such pedestrian tunnels will be expanded) by the Golf Enterprise. Notwithstanding any provision of this Agreement to the contrary, because Developers are obligated to construct a portion of a regional trail system pursuant to the Annexation Agreement, Developers shall reimburse the Golf Enterprise for one half of the cost of the construction and expansion of the westernmost pedestrian tunnel, through which the regional trail passes (or, if a separate pedestrian tunnel is constructed for the regional trail, Developers shall reimburse the Golf Enterprise for the entire cost of such tunnel) within 45 days following receipt of paid invoices from the Golf Enterprise.

5. Installation of Utility Lines and Drainage Conduits. Each Developer agrees, at its sole cost and expense, to install and dedicate to the City and the Utility Enterprise all water and sewer utility lines and storm drainage conduits required as a result of the development of its respective portion of the Development, which are to be located within the Golf Course Property; provided however, that responsibility for the cost of constructing and installing basin-wide storm drainage facilities shall be apportioned between the City (through the Utility Enterprise) and Developers as provided in the Master Drainage Plan. Such lines and conduits shall be installed in advance of the Golf Enterprise's

drainage conduits on G.C. Property

installation of grass and irrigation facilities for the Golf Course. In the event that, for any reason, a Developer is unable to comply with this requirement, such Developer shall reimburse the Golf Enterprise for the cost of repairing any and all actual damage resulting to the Golf Course Facilities from the installation of such lines and conduits.

6. Drainage Ponds on Golf Course Property. Each Developer agrees, at its sole cost and expense, to install and dedicate to the City and the Utility Enterprise all inlet and outlet structures for storm drainage detention, retention, and water quality ponds required as a result of the development of its property which are to be located on the Golf Course Property in accordance with the Master Drainage Plan and the Final Golf Course Design. Such structures shall be installed in the manner which will least interfere with the construction and operation of the Golf Course Facilities. Each Developer shall use its best efforts to ensure that such structures will be designed and located in a manner compatible to the Final Golf Course Design.

7. Flood Plain and Wetland Mitigation. Each Developer agrees, at its sole cost and expense, to perform any and all flood plain and wetland mitigation measures which may be required by the appropriate federal, state, or local agency as the result of the construction of roads and the development of such Developer's property (other than the Golf Course Facilities).

8. Installation of Water and Sewer Line Connection.

(a) The Golf and Utility Enterprises and Developers agree to each bear one-half of the total costs associated with installing a 12 inch water line from the intersection of East Jewell Avenue and Gun Club Road to the north end of the Golf Course Entrance Road. The Utility Enterprise and the Golf Enterprise shall pay the cost of oversizing the water line over 12 inches. The Golf Enterprise agrees to bear the total costs associated with installing a water line from the north end of the Golf Course Entrance Road to the Golf Course clubhouse and maintenance building.

(b) Developers agree to bear the total costs associated with installing a 12 inch sanitary sewer interceptor from the northern boundary of the Development, extending south generally along the alignment of Murphy Creek to a point on the Murphy Creek alignment parallel to the north end of the Golf Course Entrance Road (the "Murphy Creek Interceptor"). The Utility Enterprise and the Golf Enterprise shall pay the cost of oversizing the Murphy Creek Interceptor over 12 inches. The Golf Enterprise agrees to bear the total costs associated with installing a sanitary sewer line from the Murphy Creek Interceptor to the Golf Course clubhouse and maintenance building.

9. Coordination of Impacts From Developers' Development Activities. Prior to undertaking any activities with regard to the Development which may have a detrimental impact upon the ability of the Golf Enterprise to construct or operate the Golf Course Facilities, (e.g. overlot grading, installation of water and sewer utility lines and drainage conduits, construction of drainage ponds and bank stabilization measures), Developers, after consultation with the Golf Enterprise and the Golf Course architect, shall employ the method of conducting such activities which will least interfere with the construction and operation of the Golf Course Facilities. Each Developer agrees, at its sole cost and expense, to undertake all measures, which, in the reasonable opinion of the Golf Enterprise, are necessary to protect the Golf Course Facilities from erosion damage during the period of time in which such Developer engages in such activities. Each Developer and the Golf Enterprise shall work together and coordinate to ensure that, at all boundaries between the Development and the Golf Course Property, the final grade of the Development and the Golf Course shall match. If, as the result of any changes in gradation made by a Developer the Golf Enterprise finds it necessary to materially reconstruct any portion of the Golf Course Facilities, such Developer shall reimburse the Golf Enterprise for the total cost associated with any such reconstruction in a proportion that accurately reflects such Developer's responsibility.

10. Payment for Delays in Golf Course Construction Caused by Developers. In the event that it is determined that any individual Developers' acts or omissions are the cause of any delay in the construction of the Golf Course Facilities, the Developer causing such delay agrees to reimburse the Golf Enterprise for the actual increased costs of any golf course financing which are the direct result of such delay.

11. Nature of Developers' Obligations. Whenever the obligations, duties, rights, liabilities, or options contained in this Agreement refer to "Developers," the Parties agree that such obligations, duties, rights, liabilities, or options apply to the particular Developer with regard to whose property such reference is made unless the text clearly contemplates binding both Developers equally.

Section IV
MISCELLANEOUS PROVISIONS

1. Remedies of Developers. In the event that the Golf Enterprise breaches or is in default of any of its obligations under this Agreement, Developers, subject to the provisions of this Agreement, shall have the right to damages as well as the equitable remedies of specific performance or mandatory or prohibitory injunction; provided, however, that if the Golf Enterprise is prevented from or delayed in carrying out any of its obligations

under this Agreement as the direct result of the breach or default of any obligation hereunder by either Developer (the "Defaulting Developer"), the Developer not in breach or default (the "Non-Defaulting Developer") shall have no cause of action whatsoever against the Golf Enterprise for breach or default of this Agreement.

2. Golf Enterprise's Right to Cure Defaults. Before bringing any action against the Golf Enterprise under this Agreement, Developers shall give the Golf Enterprise written notice of any claim of a breach or default by the Golf Enterprise hereunder and the Golf Enterprise shall have sixty (60) days after receipt of such notice in which to cure any such breach or default.

3. Remedies of Golf Enterprise. In the event that either Developer breaches or is in default of any obligations under this Agreement, the Golf Enterprise, subject to the provisions of this Agreement, shall have the right to damages as well as to the equitable remedies of specific performance or mandatory or prohibitory injunction against the Defaulting Developer.

4. Defaulting Developers' Right to Cure Defaults. Before bringing any action against a Defaulting Developer under this Agreement, the Golf Enterprise shall give the Defaulting Developer written notice of any claim of a breach or default by said Developer hereunder and the Defaulting Developer shall have sixty (60) days after the receipt of such notice in which to cure any such breach or default.

5. No Joint Venture or Partnership. Nothing contained in this Agreement shall be interpreted or construed as creating a joint venture or partnership between the Parties hereto. No Party hereto shall have the right to create any obligation or incur any debt on behalf of any other Party to this Agreement. No person not a Party to this Agreement shall have any rights as a third-party beneficiary or otherwise pursuant to this Agreement.

6. Challenge to Zoning or Development of Developer's Properties. In the event that, prior to commencement of construction of the Golf Course Facilities, either the zoning or the general development plan for the Development is challenged pursuant to the provisions of state law, the parties agree that the Golf Enterprise may elect to suspend the obligations contained in this Agreement until such time as the challenge is resolved in a manner which permits such zoning to be implemented or such development to occur. If the City approval of the zoning or general development plan for the Development is overturned by order of a court of competent jurisdiction, this Agreement shall be terminated, under the same procedure and with the same effect as set forth in **Section I, Paragraph 6**.

7. Amendments. This Agreement may be amended only with the prior written consent and approval of each of the Parties hereto.

8. Entire Agreement. Except as may otherwise be provided herein, this Agreement and the exhibits and addenda hereto constitute the entire understanding among the Parties with respect to the subject matter hereof.

9. No Implied Terms. No obligations, agreements, representations, warranties, or certifications, expressed or implied, shall exist as among the Parties except as expressly stated herein.

10. Severability. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by any court of proper jurisdiction, it shall not affect or impair the validity, legality, or enforceability of any other provision of this Agreement, and the Parties further agree to renegotiate that provision to be valid, legal, and enforceable and to reflect as closely as possible the original intent of the Parties hereto as expressed herein with respect to the subject matter of that provision.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred, by operation of law or otherwise, without the prior written consent of all parties hereto.

12. Headings for Convenience. All headings and captions used herein are for the convenience of the Parties only and are of no meaning in the interpretation or effect of this Agreement.

13. Applicable Law. This Agreement shall be interpreted and enforced according to the laws of the state of Colorado.

14. Recordation. This Agreement shall be recorded in the real property records of the Arapahoe County Clerk and Recorder upon the Approval Date.

15. Notices. All notices, certificates, or other communications hereunder shall be deemed given when personally delivered, or after the lapse of ten (10) business days following the mailing by registered or certified mail postage due paid, addressed as follows:

For the Golf Enterprise:

City of Aurora, Colorado
1470 South Havana St.
Rm. 520
Aurora, Colorado 80012
Attn: Manager of Golf Administration

For the Utility Enterprise:	City of Aurora, Colorado 1470 South Havana St. Rm. 400 Aurora, Colorado 80012 Attn: Director of Utilities
For the City:	City of Aurora, Colorado 1470 South Havana Rm. 708 Aurora, Colorado 80012 Attn: Director of Development Services
For Developers:	3545 S. Tamarac St. #300 Denver, CO 80237 Attn: Manager

or any other such addresses as said Parties may hereinafter or from time to time designate by written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY OF AURORA, COLORADO,
acting on its own behalf
and by and through its
Golf Enterprise and its
Utility Enterprise

Paul E. Tauer, Mayor

ATTEST:

Donna L. Young, City Clerk

APPROVED AS TO FORM:

Michael J. Hyman,
Assistant City Attorney

G.C. NORTH LLC,
a Wyoming limited liability company

By _____

Its: Manager

MURPHY CREEK, L.L.C., a Wyoming
Limited Liability Company

By: _____

Its: Manager

STATE OF COLORADO)
CITY AND)ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 5th day of DECEMBER 1995, by HARVEY B. ALPERT, as Manager of G.C. North LLC, a Wyoming limited liability company.

Witness my and hand and seal.

NOTARY PUBLIC MATTHEW D. GORDON STATE OF COLORADO

_____
Notary Public

My commission expires: 1/17/97

STATE OF COLORADO)
CITY AND)ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 5th day of December 1995, by Harvey B. Alpert, as Manager of Murphy Creek L.L.C., a Wyoming limited liability company.

Witness my hand and seal.

NOTARY PUBLIC MATTHEW D. GORDON STATE OF COLORADO

_____
Notary Public

My commission expires: 1/17/95.