

SGH05SGR

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT AND LIFT STATION AGREEMENT
NAME OF CONTRACTOR:	SGH COMPANY, LLC
SUBJECT/PROJECT:	SPY GLASS RIDGE – FILING 1 LIFT STATION
LOCATION:	215 27 ROAD
TAX PARCEL #:	2945-264-00-038
FILE #:	PP-2004-169 FP-2005-090
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2005
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are **SGH Company, LLC**, ("Developer") and the **City of Grand Junction**, Colorado ("City").

For valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Community Development Director.

2279707 BK 4011 PG 290-302
10/07/2005 04:36 PM
Janice Ward CLK&REC Mesa County, CO
RecFee \$65.00 SurChg \$1.00

RECITALS

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as Spyglass Ridge Subdivision has been reviewed and approved under Community Development file # **PP-2004-169** and **FP-2005-090** ("Development" or "the Development"). The Developer intends to plat the remainder of the property in accordance with the Planning Commission's approval of the preliminary plat in PP-2004-169.

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of a lift station and the appurtenant facilities for the same to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of replacement of the lift station and the long term costs of maintenance.

This Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances and regulations.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall design, construct and install, at its own expense, a sewer lift station and the appurtenant facilities ("Lift Station") guaranteeing the same with this Development Improvements Agreement ("DIA"). In addition to this DIA the Developer shall secure all other required improvements as required by the City's Code. The Developer shall provide, as required by the terms of this agreement, for a cash payment to the City in the amount of the present value cost of the replacement and the long term maintenance of the Lift Station ("Present Value Costs"). The Present Value Costs shall be due and payable to the City by the Developer on the 10th anniversary of the execution of this Agreement. The Developer has agreed to secure the Present Value Costs by contract titled SGH Company LLC Lift Station, executed simultaneously with this DIA and attached hereto and incorporated by this reference as if fully set forth. This DIA is in addition to and does not modify other DIA(s) for improvements for the development of the Property.

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration of this Agreement. The hourly rate for those services shall be at the rate required in Development Improvement Agreements of the City at the expenses is incurred by the City. Presently the hourly rate for those services is \$45.00/hour. Administration includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than litigation, this Agreement. Making disbursements and calling/collecting Guarantees are Administration and shall be charged at the hourly rate. See, paragraph 12 concerning attorneys' / litigation fees.

3b. The Developer's obligation to complete the payment of the Present Value Costs is and shall be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer is required to post security in an amount of \$248,400.00 in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be provided on or before the recording of a second plat for the Property. If the Guarantee is not provided, the Developer agrees and understands that no further plat(s) regarding the Property shall be recorded. The Guarantee shall be provided in the form of a cash deposit made to the City or a letter of credit in a form and with content approved by the City Attorney.

5. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

6. **Use of Proceeds:** The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the payment of the assessment for the Present Value Costs, paying Administration fees, paying attorney fees.

7. **Events of Default:** The following conditions, occurrences or actions shall constitute a default by the Developer:

7a. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer. In such event the City may immediately declare a default without prior notification to the Developer;

7b. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

7c. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

7d. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

7e. Developer attempts to assign its rights and obligations under the agreement titled SGH COMPANY, LLC Lift Station and entered into simultaneously with this Agreement without the written consent of the City.

7f. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

8. City's Rights Upon Default: When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee.

9. Indemnification: The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with or on account of the performance or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

9a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

9b. The Developer is not an agent, partner, joint venturer or employee of the City.

10. No Waiver: No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

11. Amendment or Modification: The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

12. Attorney's Fees: Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at a minimum of \$125.00 per hour, more if the decision maker deems appropriate. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

13. Vested Rights: This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.

14. Third Party Rights: No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

15. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

15a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

15b. There is no prohibition on the right of the City to assign its rights under this Agreement.

15c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

15d. The City shall sign a release only after the assessment has been paid to the City in full.

16. **Notice:** Any notice required or permitted by this Agreement shall be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: David G. Behrhorst
SGH Company, LLC
1280 Ute Avenue, #32
Aspen, CO 81611

Cc:

If to City: Office of the City Attorney
250 North 5th Street
Grand Junction, CO 81501

Cc: Community Development Department
250 North 5th Street
Grand Junction, CO 81501

17. **Recordation:** Developer shall pay the costs to record this Agreement in the records of the Mesa County Clerk and Recorder's Office.

18. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

19. **Arbitration:** Any controversy or claim arising out of or relating to this Agreement, or to any claimed breach of it, shall be settled by arbitration pursuant to §13-22-201, *et seq.*, C.R.S.; and judgment upon the award rendered by the arbitrator may be entered into the appropriate court in Mesa County, Colorado. The City shall choose the arbitrator. Developer specifically waives its right to bring the action in any other court.

20. **Ambiguities.** Developer and the City have each obtained the advice of its own legal counsel regarding this Agreement or have knowingly declined to do so. The parties agree

that the rule of construing ambiguities against the drafter shall have no application to this Agreement.

By:

David G. Behrhorst 9/20/05

Developer

Date

DAVID G. BEHRHORST

Name (printed)

STATE OF COLORADO

:

:ss

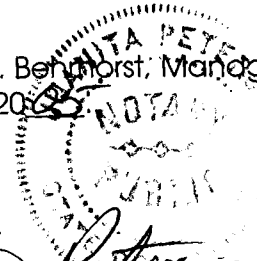
COUNTY OF MESA

:

Sworn to before me and subscribed in my presence by David G. Behrhorst, Manager for SGH Company, LLC on this the 20th day of September, 2005.

Witness my hand and seal,

My commission expires: 10-10-2005.



Juanita Peterson
Notary Public

City of Grand Junction
250 North Fifth Street
Grand Junction, CO 81501

Raymond M. Postum 10-7-05
Community Development Dept. Date

EXHIBIT A

PARCEL 1: The N1/2 NE1/4 of Section 35, Township 1 South, Range 1 West of the Ute Meridian;

EXCEPT tract conveyed to County of Mesa for road right of way by instrument recorded January 29, 1979 in Book 1184 at Page 787;

EXCEPT a parcel of land situated in the N1/2 NE1/4 of Section 35, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; said parcel being more particularly described as follows:

Beginning at #5 rebar and aluminum cap at the Center-North one sixteenth corner of said Section 35;

Thence along the West line of the N1/2 NE1/4 of said Section 35, North 00°12'07" West, a distance of 390.85 feet;

Thence South 47°07'41" East, a distance of 576.87 feet to the South line of the N1/2 NE1/4 of said Section 35;

Thence along said South line, North 89°46'40" West, a distance of 421.40 feet to the Point of Beginning.

PARCEL 2: The SW1/4 SE1/4 and the West 3/4 of the SE1/4 SE1/4 of Section 26, Township 1 South, Range 1 West of the Ute Meridian;

AND Beginning at a point which bears South 00°23'04" East a distance of 799.47 feet from the Center East Sixteenth of Section 26, Township 1 South, Range 1 West of the Ute Meridian

Thence South 53°00'25" East along the boundary of Mesa View Subdivision, a distance of 322.43 feet to a #4 rebar with cap marked NHPQ;

Thence South 47°22'59" East along the boundary of Mesa View Subdivision, a distance of 485.16 feet to the South line of the NE1/4 SE1/4 of said Section 26;

Thence along said South line North 89°53'55" West a distance of 611.05 feet to the Southwest corner of the NE1/4 SE1/4 of said Section 26;

Thence North 00°23'07" West along the West line of the NE1/4 SE1/4 of said Section 26 to the point of beginning.

PARCEL 3: The East 1/4 of the SE1/4 SE1/4 of Section 26, Township 1 South, Range 1 West of the Ute Meridian.

This description was prepared by:
Dennis R. Shellhorn
Colorado P.L.S. 18478
529 25 1/2 Road, Suite 210
Grand Junction, Colorado

NOTICE: Any rewriting or retyping of this description must NOT include this preparation information. Lack of an original seal indicates this document is not the original.

SGH COMPANY, LLC LIFT STATION

This agreement is made and entered into this 8th day of October 2005, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and SGH Company, LLC, a Colorado Limited Liability Company ("Developer").

RECITALS:

Developer represents that it is the owner of property with a street address of 215 27 Road, Grand Junction, Colorado 81503 (Mesa County tax assessor numbers 2945-264-00-038, 2945-264-00-043, 2945-264-00-046, and 2945-351-00-128), more particularly described as set forth in the attached Exhibit A in the County of Mesa, State of Colorado, hereafter referred to as the Property. Developer is presently subdividing the Property. Developer is creating lots for residential use.

The City is the manager of the Persigo Wastewater Treatment Facility ("regional sewer" or "System") and in such capacity controls the use of and tapping into the sewer facilities located within the 201 Service Area. The Property is located within the 201 Service Area. Any development of a lot for residential use shall require the disposal of any sewage waste through the System.

Pursuant to the City's policy, it is preferred that development is to be designed to be served by gravity sewer. Exceptions to the policy must be approved by the Public Works and Utilities Director ("Director"). It has been determined that gravity sewer is not an option for this Property due to the topography of the Property. As part of the City's approval of Developer's subdivision, Developer is required to construct a lift station along with appurtenant facilities ("Lift Station").

Orchard Mesa Sanitation District ("OMSD") is the sanitation district in which the Property has been included. OMSD does not want ownership of the Lift Station. The City has agreed that it will take ownership in accordance with the terms of this Agreement.

THE PARTIES HAVE AGREED AS FOLLOWS:

1. The above Recitals are intended to state the intent of the parties, and shall constitute substantive terms of this agreement. In addition, the Recitals shall form a basis to construe the several provisions hereof in the event that there is an ambiguity or the intent of the parties is otherwise unclear. Any rule such that any ambiguities shall be construed against the drafter shall not apply to this agreement; the parties agree that each is fully capable of engaging its own attorneys and other experts to understand and negotiate the language hereof.
2. Developer agrees to construct the Lift Station to serve its development, and agrees to connect such Lift Station with the System, at such location as is required by the City. The Lift Station shall be designed, inspected, constructed and approved in accordance with the engineering standards then applicable for the System, as required by the City Engineer. Developer shall pay all costs for the design, inspection, and construction of the Lift Station. As determined by the City Engineer, the Lift Station shall incorporate either an additional wet well or an emergency diesel generator to provide emergency power in case of an outage. Construction of the Lift Station shall begin on or before the recording of a

plat that includes a lot that needs the Lift Station for development purposes. Developer shall provide all perpetual easements to the City for the benefit of the System for ingress/egress access to the Lift Station and perpetual easements for the installation, operation, maintenance and repair of the Lift Station as determined necessary by the City.

3. One year following substantial completion of construction and approval by the City of the as-built drawings and the Lift Station, whichever is later, as determined by the City Engineer, and provided that the Lift Station is in operating condition, free from defects and not needing repair nor having been repaired within the last year, except for normal routine maintenance, and has been built in accordance with City requirements, the Developer may request in writing that the City accept transfer of title of the Lift Station.

The City agrees that it will accept a warranty deed for no consideration to all real property interests needed to perpetually own, operate and maintain the Lift Station if: (1) the Lift Station is then in operating condition, free from defects and not needing repair nor having been repaired within the last year except for normal routine maintenance; (2) the Lift Station has been constructed in accordance with the standards set by the City Engineer; (3) the proposed document(s) warranting title are approved by the City Attorney and are not subject to any liens or encumbrances except as are approved by the City Attorney; (4) all necessary easements have been granted; and (5) the Developer warrants and agrees to hold harmless and indemnify the City that the interests in land, e.g. easements and fee title, and facilities are free from any environmental contamination and any hazardous or other regulated or dangerous substances. The City may require proof of such matters in writing, including a report and both field and analytical work from a qualified environmental scientist. Developer shall also supply evidence acceptable to the City that such rights-of-way or other property interests are free from hazardous, toxic and other regulated materials and substances.

(b) Except for normal routine maintenance, if there are any repairs or other construction changes or improvements required, the one-year period referred to shall be extended so it runs from the last repair, construction or other change to the Lift Station (this shall be referred to as "Final Acceptance"). Upon initial acceptance the City shall be responsible for the normal routine maintenance of the Lift Station. The Developer shall warrant the Lift Station for one year following initial acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Lift Station as repaired and/or replaced, shall comply with the City Engineer's construction plans, City standards and specifications at the end of the warranty period. The Developer shall warrant each repair and/or replacement made under the warranty period for one year following the initial acceptance. Upon Final Acceptance, the City shall thereafter own, operate and maintain the Lift Station.

(c) The transfer to, acceptance and Final Acceptance by, the City of the Lift Station shall only be for those portions of the Lift Station which are not service lines and are not structures/improvements appurtenant to service lines.

(d) City agrees to permit the Developer the nonexclusive use of any easements obtained in the name of the City for the purposes of the construction of the Lift Station, but

only so long as Developer complies with the requirements and conditions of the City Engineer.

(e) The offer to transfer to, and acceptance by, the City shall constitute Developer's agreement to forever: (1) hold harmless and indemnify the City, its officers, agents and employees from and with respect to any and all claims arising out of this agreement and/or the construction of the Lift Station or connection to the regional system, excepting only causes of action or claims resulting from the sole misconduct of the City; (2) hold harmless from and indemnify the City for all reasonable attorneys' fees incurred by the City, or the value thereof, including experts, fees and costs; and (3) with respect to the matters provided for in, or reasonably arising out of, this Agreement, indemnify and hold harmless the City, from claims by the Developer, any successor of the Developer, and any third party, whether or not any such claim or cause of action is frivolous.

4. The Developer shall obtain any required prior approvals in the name of the City at no cost to the City, as deemed necessary by the City Engineer, for the construction, repair and maintenance of the Lift Station.
5. The Developer, its successor and assigns, including all future lot owners of property within the Property shall be assessed the present value of the cost of replacement in twenty-five years of the pumps and long term maintenance for a fifty year period of the Lift Station. The assessment is Two Hundred Forty-eight Thousand Four Hundred dollars (\$248,400.00). The Developer shall provide the City with a Development Improvements Agreement ("DIA") specifically for the assessment securing the \$248,400.00 for a period of ten (10) years. The assessment shall be paid to the City at the time the Developer or the then property owner or the property owner's builder obtains sewer clearance for the building permit. The assessment shall be paid with the plant investment fee for the System. Developer agrees that the assessment shall be a covenant running with the land. If the full assessment is not collected within ten (10) years from the date of the signing of this Agreement by all parties, then the Developer shall pay the remainder of the assessment.
6. The Property has been approved by the City through the preliminary plat approval process by the Grand Junction Planning Commission for the development of 225 lots. The assessment shall be collected from the first 225 lots, tracts, or parcels to develop requiring sewer service. The assessment shall be \$1,104.00 for each.
7. This Agreement shall bind the signatory parties and their respective heirs, successors and assigns.
8. The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. The City may not unreasonably withhold its approval but any unapproved assignment is void.
9. The Developer agrees that the construction of the Lift Station, and the possible acceptance in the future by the City of said Lift Station, does not waive or limit the payment by the Developer, or any successor of the Developer, of any costs, fees or charges (e.g., plant investment fees, trunk extension fees, inspection fees, monthly sewer service charges)

which the City is now, or may be in the future, entitled to charge or collect from the Developer or any user or person connected to or benefiting from the Lift Station.

10. This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.
11. If there are any matters relating to the enforcement of this Agreement which are not addressed by this Agreement or are omitted by oversight of any party, then each party agrees that they will proceed in good faith to amicably resolve any dispute concerning this Agreement and/or the relationship that is created, that each party will negotiate in good faith, prior to initiating arbitration, to resolve the dispute as most expeditiously and amicably as practicable.
12. Any controversy or claim arising out of or relating to this Agreement, or to any claimed breach of it, shall be settled by arbitration pursuant to §13-22-201, *et seq.*, C.R.S.; and judgment upon the award rendered by the arbitrator may be entered into the appropriate court in Mesa County, Colorado. The City shall choose the arbitrator. Developer specifically waives its right to bring the action in any other court.

CITY OF GRAND JUNCTION

BY: [Signature]
City Manager

Date: 10-04-05

Attest: Stephanie Tain
City Clerk

Date: 10/4/05



DEVELOPER: SGH Company, LLC

BY: David G. Behrhorst

Date: 9/20/05

David G. Behrhorst

Address: 1280 Ute Avenue, #32, Aspen, COL 81611

STATE OF COLORAD :
: ss
COUNTY OF MESA :

The foregoing instrument was acknowledged before me this 4th day of October, 2005, by Kelly Arnold, City Manager for the City of Grand Junction.

Witness my hand and official seal.

My commission expires 10-10-2005

Quanta Peterson
Notary Public

STATE OF COLORAD :
: ss
COUNTY OF MESA :

The foregoing instrument was acknowledged before me this 20th day of September, 2005, by David G. Behrhorst, Manager for SGH Company, LLC.

Witness my hand and official seal.
My commission expires 10-10-2005

Quanta Peterson
Notary Public

Recorder's Note: No Notary Seal
When Recorded

Not a party to this Agreement, but in agreement that the City shall own the Lift Station.

Orchard Mesa Sanitation District

By: _____

Attest: _____

Date: _____

My commission expires _____

Notary Public

STATE OF COLORAD :
: ss
COUNTY OF MESA :

The foregoing instrument was acknowledged before me this ____ day of _____,
20 ____, by David G. Behrhorst, Manager for SGH Company, LLC.

Witness my hand and official seal.
My commission expires _____

Notary Public

Not a party to this Agreement, but in agreement that the City shall own the Lift Station.

Orchard Mesa Sanitation District

By: *Robt A. Eddy*

Attest: *Darryl Powell*

Date: *10-4-05*

EXHIBIT A

PARCEL 1: The N1/2 NE1/4 of Section 35, Township 1 South, Range 1 West of the Ute Meridian;

EXCEPT tract conveyed to County of Mesa for road right of way by instrument recorded January 29, 1979 in Book 1184 at Page 787;

EXCEPT a parcel of land situated in the N1/2 NE1/4 of Section 35, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; said parcel being more particularly described as follows:

Beginning at #5 rebar and aluminum cap at the Center-North one sixteenth corner of said Section 35;

Thence along the West line of the N1/2 NE1/4 of said Section 35, North 00°12'07" West, a distance of 390.85 feet;

Thence South 47°07'41" East, a distance of 576.87 feet to the South line of the N1/2 NE1/4 of said Section 35;

Thence along said South line, North 89°46'40" West, a distance of 421.40 feet to the Point of Beginning.

PARCEL 2: The SW1/4 SE1/4 and the West 3/4 of the SE1/4 SE1/4 of Section 26, Township 1 South, Range 1 West of the Ute Meridian;

AND Beginning at a point which bears South 00°23'04" East a distance of 799.47 feet from the Center East Sixteenth of Section 26, Township 1 South, Range 1 West of the Ute Meridian

Thence South 53°00'25" East along the boundary of Mesa View Subdivision, a distance of 322.43 feet to a #4 rebar with cap marked NHPQ;

Thence South 47°22'59" East along the boundary of Mesa View Subdivision, a distance of 485.16 feet to the South line of the NE1/4 SE1/4 of said Section 26;

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Thence North 00°23'07" West along the West line of the NE1/4 SE1/4 of said Section 26 to the point of beginning.

PARCEL 3: The East 1/4 of the SE1/4 SE1/4 of Section 26, Township 1 South, Range 1 West of the Ute Meridian.

This description was prepared by:
Dennis R. Shellhorn
Colorado P.L.S. 18478
529 25 1/2 Road, Suite 210
Grand Junction, Colorado

NOTICE: Any rewriting or retyping of this description must NOT include this preparation information. Lack of an original seal indicates this document is not the original.

SGH COMPANY, LLC LIFT STATION MODIFICATION AGREEMENT

This Modification Agreement is made and entered into effective NOVEMBER 30, 2006, by and between the **CITY OF GRAND JUNCTION, a Colorado home-rule municipality** ("City") and **SGH COMPANY, LLC, a Colorado limited liability company** ("Developer").

RECITALS

A. City and Developer entered into that certain Lift Station Agreement which was recorded at Book 4011, Page 274-280, Mesa County Records, on October 7, 2005 ("Agreement").

B. The Agreement provided, at paragraph 5, for payment by the Developer, its successors and assigns, the sum of \$248,400 over a ten (10) year term to cover future repair and replacement of the lift station, such ten (10) year term to commence October 4, 2005.

C. The parties wish to amend and modify the Agreement to provide that the commencement date for the ten (10) year term set forth in paragraph 5 of the Agreement should be the date the lift station is placed in service.

COVENANTS AND AGREEMENTS

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

1. Paragraph 5 of the Agreement is amended by deleting the last sentence of said paragraph and inserting the following:

"If the full assessment is not collected within ten (10) years of April 15, 2007, then the Developer shall pay the remainder of the assessment."

2. All other terms and conditions of the Agreement not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Modification Agreement as of the date first set forth above.

"CITY"



CITY OF GRAND JUNCTION, a Colorado home-rule municipality

By: David Varley
City Manager

ATTEST:

Stephanie Lun
City Clerk

"DEVELOPER"

SGH COMPANY, LLC, a Colorado limited liability company

By: David G. Behrhorst
David G. Behrhorst, Manager

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 18th day of December, 2006, by the City of Grand Junction, a home-rule municipality, by David Varley, the City Manager, and the Stephanie Lun, the City Clerk.

Witness my hand and official seal.

My commission expires:

10-10-2009

Juanita Peterson
Notary Public

PUBLIC WORKS & PLANNING

May 18, 2010

David G. Behrhorst
 SGH Company, LLC
 1280 Ute Avenue, Suite 32
 Aspen, CO 81611

Project: Spyglass Ridge Subdivision
Subject: Reduction of Lift Station Impact Fee Obligation

Dear Mr. Behrhorst,

We have taken into consideration your request to reduce your financial obligation for the Lift Station Impact fee associated with the above referenced subdivision. We have reviewed our documentation of payment received and find that 53 properties have paid the lift station impact fee of \$1,104.00, for a total received of \$58,512.00. We agree that the Development Improvement Agreement as described in the SGH COMPANY, LLC LIFT STATION Agreement recorded BK 4011 PG 274, may be reduced by \$58,512.00, resulting in a remaining obligation of \$189,888.00 presently due under the agreement.

We will record this letter in the Mesa County Clerk and Records office. That recording will serve as amendment of the DIA for the Lift Station Impact Fee for Spyglass Ridge Subdivision.

Please let me know if you need further information on this matter.

	5/18/10		5/19/2010
Bret Guillory, PE Utility Engineer	date	David G. Behrhorst Developer	date

pc John Shaver – City Attorney
 Debi Overholt – Customer Service
 file



Alpine Bank

Grand Junction

225 N. 5th Street
Grand Junction, Colorado 81501
970-243-5600
Fax 970-243-5778

CITY OF GRAND JUNCTION, COLORADO
C/O Director of Community Development
250 North 5th Street
Grand Junction, CO 81501

Date of Issue: MAY 20, 2010
Amount: \$189,888.00
Number: 7165839733
Expiration Date: APRIL 15, 2017

*Replaces LOC
7160441033*

Applicant: SGH COMPANY, LLC

Dear Sirs:

We hereby establish our Irrevocable Letter of Credit No. 7165839733 in favor of the CITY OF GRAND JUNCTION, COLORADO at the request of and for the account of SGH COMPANY, LLC in the amount of \$189,888.00 (ONE HUNDRED EIGHTY-NINE THOUSAND, EIGHT HUNDRED AND EIGHTY and 00/100's U.S. Dollars).

This Letter of Credit is subject to the following terms and conditions:

- 1) It is effective upon signature;
- 2) It expires on APRIL 15, 2017 subject to the automatic extensions described below;
- 3) This Letter of Credit is available by sight draft(s) drawn and marked "Drawn under Alpine Bank Letter of Credit No. 7165839733 dated MAY 20, 2010";
- 4) This letter of credit is established for the use and benefit of the CITY OF GRAND JUNCTION, COLORADO by reason of the SGH COMPANY, LLC being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
- 5) The following statement signed by an authorized designee of the CITY OF GRAND JUNCTION, COLORADO may accompany the sight draft;
- 6) SGH COMPANY, LLC failed to comply with the terms, conditions, provision and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the CITY OF GRAND JUNCTION, COLORADO. The monies received from this drawing are required to construct those improvements. The CITY OF GRAND JUNCTION, COLORADO therefore requests the payment of \$ _____;
- 7) It is a condition of this Letter of Credit that it will be automatically extended for a period of six (6) months from the present or any future expiration date unless: (a) the underlying obligation has been performed, released or satisfied, (b) this Letter of Credit has been called in full or (c) the Bank

notifies the CITY OF GRAND JUNCTION, COLORADO at 250 North 5th Street, Grand Junction, CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit;

- 8) Except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9) This Letter of Credit is neither negotiable nor assignable;
- 10) Partial drawings are permitted;
- 11) We hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored or due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof of this Letter of Credit;
- 12) Except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.

Approved: Alpine Bank

By:


AARON MILLER, EXECUTIVE VICE PRESIDENT

SGH COMPANY, LLC LIFT STATION

This agreement is made and entered into this 8th day of October 2005, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and SGH Company, LLC, a Colorado Limited Liability Company ("Developer").

2279705 BK 4011 PG 274-280
10/07/2005 04:36 PM
Janice Ward CLK&REC Mesa County, CO
RecFee \$35.00 SurChs \$1.00

RECITALS:

Developer represents that it is the owner of property with a street address of 215 27 Road, Grand Junction, Colorado 81503 (Mesa County tax assessor numbers 2945-264-00-038, 2945-264-00-043, 2945-264-00-046, and 2945-351-00-128), more particularly described as set forth in the attached Exhibit A in the County of Mesa, State of Colorado, hereafter referred to as the Property. Developer is presently subdividing the Property. Developer is creating lots for residential use.

The City is the manager of the Persigo Wastewater Treatment Facility ("regional sewer" or "System") and in such capacity controls the use of and tapping into the sewer facilities located within the 201 Service Area. The Property is located within the 201 Service Area. Any development of a lot for residential use shall require the disposal of any sewage waste through the System.

Pursuant to the City's policy, it is preferred that development is to be designed to be served by gravity sewer. Exceptions to the policy must be approved by the Public Works and Utilities Director ("Director"). It has been determined that gravity sewer is not an option for this Property due to the topography of the Property. As part of the City's approval of Developer's subdivision, Developer is required to construct a lift station along with appurtenant facilities ("Lift Station").

Orchard Mesa Sanitation District ("OMSD") is the sanitation district in which the Property has been included. OMSD does not want ownership of the Lift Station. The City has agreed that it will take ownership in accordance with the terms of this Agreement.

THE PARTIES HAVE AGREED AS FOLLOWS:

1. The above Recitals are intended to state the intent of the parties, and shall constitute substantive terms of this agreement. In addition, the Recitals shall form a basis to construe the several provisions hereof in the event that there is an ambiguity or the intent of the parties is otherwise unclear. Any rule such that any ambiguities shall be construed against the drafter shall not apply to this agreement; the parties agree that each is fully capable of engaging its own attorneys and other experts to understand and negotiate the language hereof.
2. Developer agrees to construct the Lift Station to serve its development, and agrees to connect such Lift Station with the System, at such location as is required by the City. The Lift Station shall be designed, inspected, constructed and approved in accordance with the engineering standards then applicable for the System, as required by the City Engineer. Developer shall pay all costs for the design, inspection, and construction of the Lift Station. As determined by the City Engineer, the Lift Station shall incorporate either an additional wet well or an emergency diesel generator to provide emergency power in case of an outage. Construction of the Lift Station shall begin on or before the recording of a

plat that includes a lot that needs the Lift Station for development purposes. Developer shall provide all perpetual easements to the City for the benefit of the System for ingress/egress access to the Lift Station and perpetual easements for the installation, operation, maintenance and repair of the Lift Station as determined necessary by the City.

3. One year following substantial completion of construction and approval by the City of the as-built drawings and the Lift Station, whichever is later, as determined by the City Engineer, and provided that the Lift Station is in operating condition, free from defects and not needing repair nor having been repaired within the last year, except for normal routine maintenance, and has been built in accordance with City requirements, the Developer may request in writing that the City accept transfer of title of the Lift Station.

The City agrees that it will accept a warranty deed for no consideration to all real property interests needed to perpetually own, operate and maintain the Lift Station if: (1) the Lift Station is then in operating condition, free from defects and not needing repair nor having been repaired within the last year except for normal routine maintenance; (2) the Lift Station has been constructed in accordance with the standards set by the City Engineer; (3) the proposed document(s) warranting title are approved by the City Attorney and are not subject to any liens or encumbrances except as are approved by the City Attorney; (4) all necessary easements have been granted; and (5) the Developer warrants and agrees to hold harmless and indemnify the City that the interests in land, e.g. easements and fee title, and facilities are free from any environmental contamination and any hazardous or other regulated or dangerous substances. The City may require proof of such matters in writing, including a report and both field and analytical work from a qualified environmental scientist. Developer shall also supply evidence acceptable to the City that such rights-of-way or other property interests are free from hazardous, toxic and other regulated materials and substances.

(b) Except for normal routine maintenance, if there are any repairs or other construction changes or improvements required, the one-year period referred to shall be extended so it runs from the last repair, construction or other change to the Lift Station (this shall be referred to as "Final Acceptance"). Upon initial acceptance the City shall be responsible for the normal routine maintenance of the Lift Station. The Developer shall warrant the Lift Station for one year following initial acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Lift Station as repaired and/or replaced, shall comply with the City Engineer's construction plans, City standards and specifications at the end of the warranty period. The Developer shall warrant each repair and/or replacement made under the warranty period for one year following the initial acceptance. Upon Final Acceptance, the City shall thereafter own, operate and maintain the Lift Station.

(c) The transfer to, acceptance and Final Acceptance by, the City of the Lift Station shall only be for those portions of the Lift Station which are not service lines and are not structures/improvements appurtenant to service lines.

(d) City agrees to permit the Developer the nonexclusive use of any easements obtained in the name of the City for the purposes of the construction of the Lift Station, but

only so long as Developer complies with the requirements and conditions of the City Engineer.

(e) The offer to transfer to, and acceptance by, the City shall constitute Developer's agreement to forever: (1) hold harmless and indemnify the City, its officers, agents and employees from and with respect to any and all claims arising out of this agreement and/or the construction of the Lift Station or connection to the regional system, excepting only causes of action or claims resulting from the sole misconduct of the City; (2) hold harmless from and indemnify the City for all reasonable attorneys' fees incurred by the City, or the value thereof, including experts, fees and costs; and (3) with respect to the matters provided for in, or reasonably arising out of, this Agreement, indemnify and hold harmless the City, from claims by the Developer, any successor of the Developer, and any third party, whether or not any such claim or cause of action is frivolous.

4. The Developer shall obtain any required prior approvals in the name of the City at no cost to the City, as deemed necessary by the City Engineer, for the construction, repair and maintenance of the Lift Station.
5. The Developer, its successor and assigns, including all future lot owners of property within the Property shall be assessed the present value of the cost of replacement in twenty-five years of the pumps and long term maintenance for a fifty year period of the Lift Station. The assessment is Two Hundred Forty-eight Thousand Four Hundred dollars (\$248,400.00). The Developer shall provide the City with a Development Improvements Agreement ("DIA") specifically for the assessment securing the \$248,400.00 for a period of ten (10) years. The assessment shall be paid to the City at the time the Developer or the then property owner or the property owner's builder obtains sewer clearance for the building permit. The assessment shall be paid with the plant investment fee for the System. Developer agrees that the assessment shall be a covenant running with the land. If the full assessment is not collected within ten (10) years from the date of the signing of this Agreement by all parties, then the Developer shall pay the remainder of the assessment.
6. The Property has been approved by the City through the preliminary plat approval process by the Grand Junction Planning Commission for the development of 225 lots. The assessment shall be collected from the first 225 lots, tracts, or parcels to develop requiring sewer service. The assessment shall be \$1,104.00 for each.
7. This Agreement shall bind the signatory parties and their respective heirs, successors and assigns.
8. The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. The City may not unreasonably withhold its approval but any unapproved assignment is void.
9. The Developer agrees that the construction of the Lift Station, and the possible acceptance in the future by the City of said Lift Station, does not waive or limit the payment by the Developer, or any successor of the Developer, of any costs, fees or charges (e.g., plant investment fees, trunk extension fees, inspection fees, monthly sewer service charges)

which the City is now, or may be in the future, entitled to charge or collect from the Developer or any user or person connected to or benefiting from the Lift Station.

- 10. This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.
- 11. If there are any matters relating to the enforcement of this Agreement which are not addressed by this Agreement or are omitted by oversight of any party, then each party agrees that they will proceed in good faith to amicably resolve any dispute concerning this Agreement and/or the relationship that is created, that each party will negotiate in good faith, prior to initiating arbitration, to resolve the dispute as most expeditiously and amicably as practicable.
- 12. Any controversy or claim arising out of or relating to this Agreement, or to any claimed breach of it, shall be settled by arbitration pursuant to §13-22-201, *et seq.*, C.R.S.; and judgment upon the award rendered by the arbitrator may be entered into the appropriate court in Mesa County, Colorado. The City shall choose the arbitrator. Developer specifically waives its right to bring the action in any other court.

CITY OF GRAND JUNCTION

BY: [Signature]
City Manager

Date: 10-04-05

Attest: Stephanie Tain
City Clerk

Date: 10/4/05



DEVELOPER: SGH Company, LLC

BY: [Signature]
David G. Behrhorst

Date: 9/20/05

Address: 1280 Ute Avenue, #32, Aspen, COL 81611

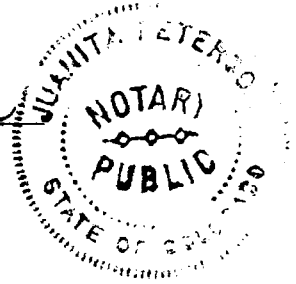
STATE OF COLORAD :
: ss
COUNTY OF MESA :

The foregoing instrument was acknowledged before me this 4th day of October, 2005, by Kelly Arnold, City Manager for the City of Grand Junction.

Witness my hand and official seal.

My commission expires 10-10-2005

Juanita Peterson
Notary Public

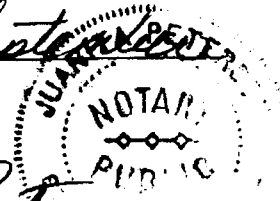


STATE OF COLORAD :
: SS
COUNTY OF MESA :

The foregoing instrument was acknowledged before me this 20th day of September, 2005, by David G. Behrhorst, Manager for SGH Company, LLC.

Witness my hand and official seal.
My commission expires 10-10-2005

Juanita Peterson
Notary Public



Not a party to this Agreement, but in agreement that the City shall own the Lift Station.

Orchard Mesa Sanitation District

By: _____

Attest: _____

Date: _____

My commission expires _____

Notary Public

STATE OF COLORAD :
 : ss
COUNTY OF MESA : :

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by David G. Behrhorst, Manager for SGH Company, LLC.

Witness my hand and official seal.
My commission expires _____

Notary Public

Not a party to this Agreement, but in agreement that the City shall own the Lift Station.

Orchard Mesa Sanitation District

By: Robt A. Ehlers

Attest: Darryl Powell

Date: 10-4-05

EXHIBIT A

PARCEL 1: The N1/2 NE1/4 of Section 35, Township 1 South, Range 1 West of the Ute Meridian;

EXCEPT tract conveyed to County of Mesa for road right of way by instrument recorded January 29, 1979 in Book 1184 at Page 787;

EXCEPT a parcel of land situated in the N1/2 NE1/4 of Section 35, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; said parcel being more particularly described as follows:

Beginning at #5 rebar and aluminum cap at the Center-North one sixteenth corner of said Section 35;

Thence along the West line of the N1/2 NE1/4 of said Section 35, North 00°12'07" West, a distance of 390.85 feet;

Thence South 47°07'41" East, a distance of 576.87 feet to the South line of the N1/2 NE1/4 of said Section 35;

Thence along said South line, North 89°46'40" West, a distance of 421.40 feet to the Point of Beginning.

PARCEL 2: The SW1/4 SE1/4 and the West 3/4 of the SE1/4 SE1/4 of Section 26, Township 1 South, Range 1 West of the Ute Meridian;

AND Beginning at a point which bears South 00°23'04" East a distance of 799.47 feet from the Center East Sixteenth of Section 26, Township 1 South, Range 1 West of the Ute Meridian

Thence South 53°00'25" East along the boundary of Mesa View Subdivision, a distance of 322.43 feet to a #4 rebar with cap marked NHPQ;

Thence South 47°22'59" East along the boundary of Mesa View Subdivision, a distance of 485.16 feet to the South line of the NE1/4 SE1/4 of said Section 26;

Thence along said South line North 89°53'55" West a distance of 611.05 feet to the Southwest corner of the NE1/4 SE1/4 of said Section 26;

Thence North 00°23'07" West along the West line of the NE1/4 SE1/4 of said Section 26 to the point of beginning.

PARCEL 3: The East 1/4 of the SE1/4 SE1/4 of Section 26, Township 1 South, Range 1 West of the Ute Meridian.

This description was prepared by:

Dennis R. Shellhorn

Colorado P.L.S. 18478

529 25 1/2 Road, Suite 210

Grand Junction, Colorado

NOTICE: Any rewriting or retyping of this description must NOT include this preparation information. Lack of an original seal indicates this document is not the original.