

CWI95CMS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: CHAPARRAL WEST INCORPORATED, BY
RONALD A. ABELOE

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: COUNTRY MEADOWS
SUBDIVISION ANNEXATION, REVISED OFFICIAL DEVELOPMENT PLAN OF
COUNTRY MEADOWS SUBDIVISION RECORDED IN BOOK 2151 AT PAGE 785 OF
MESA COUNTY RECORDS

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT

THIS AGREEMENT made and entered into this 6th day of December, 1995, by and between Chaparral West, Inc., a Colorado corporation ("Annexor" or "Developer"), and the City of Grand Junction, a municipal corporation, State of Colorado, hereinafter referred to as "City".

In consideration of the mutual obligations, benefits, duties and promises the parties hereto agree as follows:

1. Annexor represents that it is the owner of the property described in Exhibit "Country Meadows" attached hereto (generally consisting of that property described in the revised Official Development Plan of Country Meadows Subdivision recorded in Book 2151 at page 785 of the Mesa County records), (the "Property") and that it has the authority to enter into this agreement on the terms and conditions set forth. If Annexor needs to obtain the consent or agreement of another party in order to effectuate this agreement, Annexor agrees to do so. Annexor shall provide a copy of a corporate resolution establishing that a corporate officer who signs this agreement has the full authority to bind the corporation to this agreement.

2. City shall initiate the annexation process to annex the Property into the City on December 6, 1995, or as soon thereafter as the City deems appropriate. The City may annex the Property in conjunction with other properties in the area in order that the City may maximize the extent of territory annexed.

3. This agreement may be recorded with the Clerk and Recorder in Mesa County, Colorado, and if recorded 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. Annexor shall forthwith notify the City in writing of assignments and the names and addresses of assignees; any such assignment shall not be effective as to the City until such notice has been accomplished.

4. Nothing contained in this agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abnegation of City's legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its inhabitants; nor shall this Agreement prohibit the enactment or collection by City of any fee which is of uniform or general application, or necessary for the protection or promotion of the public health or welfare.

5. If the annexation of the property or any portion thereof is challenged by a referendum or an initiative, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended pending the outcome of the election. If the challenge to the annexation results in disconnection of the property from City, then this Annexation Agreement and all provisions contained herein shall be null and void and of no

further effect, except as otherwise provided herein. If the challenge fails, then Annexor and City shall continue to be bound by all the terms and provisions of this Annexation Agreement.

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6. In the event that the annexation of the property or any portion thereof is voided by final action of any court (such action not being associated with a referendum or initiative election), City and Annexor shall cooperate to cure the legal defect which resulted in disconnection of the property, and upon such cure this Annexation Agreement shall be deemed to be an agreement to annex the property to City pursuant to §31-12-121, C.R.S. Annexor shall reapply for annexation, or the City may sign, as Annexor's attorney-in-fact, a petition to annex, when the property becomes eligible for annexation as determined by City.

7. 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 the agreement did not contain the particular part, term, or provision held illegal or invalid.

8. (a) That portion of the Property North of the South line of Section 36, Township 1 North, Range 2 West of the Ute Meridian, is located in the Fruita 201 Sewer Service Area. The City of Fruita has consented in writing to sewer service being provided to that portion of the Property by the Grand Junction 201 Sewer System. In addition, the City and Mesa County have entered into a written agreement dated November 8, 1995, for the City to provide sewer service to that portion of the Property, despite the fact that a question of authority to amend the Grand Junction 201 is a contested issue in certain litigation pending between them. The City agrees to provide sewer service to all of the Property from the Grand Junction 201 Sewer System.

(b) Prior to signing of this Agreement, a final plat has been recorded by Mesa County of Filing 1 of Country Meadows Subdivision, which constitutes a portion of the Property.

(i) Despite anything to the contrary stated elsewhere in this Agreement, Developer agrees that all lots along the western boundary of the Property from the northern boundary of Filing 1 of the Independence Valley Subdivision to the southern boundary shall provide a 40 foot rear yard set back. In lieu of the 40 foot rear yard set back required by the County for lots along the southeastern boundary of Property adjacent to the neighboring developed parcel, Developer will buffer the rear lot lines of all lots subsequently developed on the Property adjoining the property legally described as:

A tract of land located in a part of the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 15, Township 11 South, Range 101 West of the 6th Principal Meridian, being more particularly described as follows:

Commencing at the S¼ corner of Section 35, Township 1 North, Range 1 West of the Ute Meridian, thence East 10.5 feet, thence South 00°31'00" West 1,101.5 feet, thence South 89°32'00" East 532.5 feet to the True Point of Beginning, thence North 125.0 feet, thence North 66°35'00" East 200.0 feet, thence North 62°06'00" East 250.6 feet, thence South 325.0 feet, thence North 89°32'00" West 405.0 feet to the True Point of Beginning

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prior to Developer's sale of those lots by construction of a six foot privacy fence along the boundary between those lots and the neighboring parcel described above.

(ii) Developer shall not be required to provide irrigation water to any portion of the Property. If Developer provides irrigation water to the Property, Developer may provide irrigation water to some or all portions of the Property in Developer's sole discretion; except that, if irrigation water is provided, prior to installation an engineered irrigation plan shall be submitted to and approved by the City for any portion of the Property for which irrigation water is provided.

(c) The City accepts the Official Development Plan ("ODP") of the Property approved by Mesa County and recorded in Book 2151 at page 785 in the records of the Mesa County Clerk and Recorder as a preliminary plan for the remainder of the Property other than Filing 1, subject only to: (i) possible reduction in the number of lots shown if required for compliance with applicable drainage standards as described in paragraph 10 of this Agreement; (ii) deletion of "flag" lots because the Outline Development Plan shows certain "flag" lots which do not meet the City's requirements; and (iii) the provisions of subsections (d) and (e) below.

(d) Developer acknowledges the Developer will be required to submit for the City's approval a proposed amended preliminary plat prior to development approval to address the issues of these flag lots and compliance with drainage standards as described in Section 10, either or both of which changes shall be the only aspects in which the existing Outline Development Plan shall be required to be amended to obtain City approval. The City agrees that these changes will be minor changes to the preliminary plan, which will be considered for approval in an administrative procedure and will not require public hearing for approval.

(e) Developer represents that the ODP and related materials and documents submitted by Developer to the County and approved by the County substantially comply with the requirements of the City for a preliminary plan, except that the ODP does not show lot dimensions and acreage of each lot, and the width of the lines on the ODP mylar is specified by the City and not by the County. If Developer's assertion is correct, the City and Developer agree that the public hearing requirements for the City's preliminary plan have been accomplished. Developer will submit all materials and information reasonably required for administrative and technical review to obtain Developer's preliminary plan approval. If the City believes that Developer has not substantially satisfied the City's preliminary plan requirements, the City will notify Developer in writing, and, if Developer does not satisfy the City within 60 days after receipt of that notice that Developer has complied with the City's preliminary

plan requirements, then the City may require that the regular City preliminary plan requirements (including public hearing requirements) will apply.

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(f) Developer assumes the risks and uncertainties attendant to the existing circumstances and issues described in paragraph 8(a) and 8(b) above and agrees to hold the City, and its officers and employees harmless from any loss, damage or injury suffered by Developer in such regard. Delay or the inability to develop because of the existing circumstances and issues shall not constitute a basis to disconnect the Property, or any portion thereof, from the City nor shall it constitute a breach by the City.

9. Except as otherwise stated herein, no right or remedy of disconnection of the described property from the City shall accrue from this agreement, other than that provided by § 31-12-119, C.R.S. In the event the Property or any portion thereof is disconnected at Annexor's request, City shall have no obligation to serve the disconnected property and this agreement shall be void and of no further force and effect as to such property.

10. (a) The City staff has reviewed the approved densities and the Official Development Plan as shown on the attached Exhibit Country Meadows, which have been previously approved by Mesa County, and agrees to recommend approval of RSF-5 zoning to the Planning Commission and City Council for all of the Property within 90 days after annexation, subject however: (i) to the provisions of paragraph 8 above; (ii) to the other terms hereof; and (iii) to further information to be presented to the City under Developer's requirement to provide for adequate drainage for the Property as described below.

(b) If, for example, the drainage requirements which apply to the Property, following Developer's preparation of a drainage report in accordance with City requirements, require that a portion of the Property must be used to provide drainage for the Property (including Filing 1) and the available acreage is insufficient to allow for buildout at a RSF-5 level, the density will be accordingly reduced.

(c) Despite anything to the contrary stated elsewhere in this Agreement, the City agrees to accept (and not to require any change in, or supplementation of) a proposed 24 inch storm sewer installed as part of the Filing 1 subdivision improvements (which also serves portions of the remainder of the Property); provided, that such storm sewer is installed at 1.03% or greater grade, or otherwise provides a flow capacity of at least 19.2 cfs as shown in the October 25, 1995, drainage report submitted by Developer. By way of example and not limitation, the City agrees that, for purposes of any drainage plan that Developer is required to submit or have approved pursuant to this Agreement or any future development of the Property, this storm sewer will conclusively be presumed to provide all storm drainage required for all of Country Meadows Drive, all of Joshua Court and all lots adjoining any part of either of those streets, together with the 300 feet of Baseline Drive immediately East of Filing 1.

(d) Unless specifically provided for herein, the City grants no approval nor variance from its standard processes, requirements or specifications for approval or construction.

11. The improvements guarantee required by the City Code to ensure that the required improvements are constructed by the Developer (to City standards) may be in the form of an agreement in substantially similar form to that "Improvements Agreement" on file with the City Clerk. If any of the subdivision improvements required by the County relative to approval of Filing 1 of Country Meadows Subdivision has not been completed by the effective date of the ordinance which annexes the Property, Developer shall provide a bank letter of credit, in accordance with the City's requirements, for the cost of completion (as shown by the County subdivision improvements agreement), and inspection, of such improvements. Because the City will not have inspected any of the required infrastructure for Filing 1 except the sewer infrastructure, Developer, as provided in the Improvements Agreement, hereby guarantees, for twelve months following acceptance by the City or the effective date of the ordinance annexing the Property, whichever is later, that all such infrastructure complies with the County's standards at the time of recording of the Filing 1 final plat, and that Developer shall replace or repair, in accordance with those standards, in the event of failure of any portion of any such infrastructure.

12. Annexor shall, contemporaneously herewith, execute a power of attorney for the purpose of annexing the Property to the City. A copy of the power of attorney is attached hereto and labeled Exhibit "Country Meadows Power of Attorney." At such times as the City deems necessary, Developer agrees to take such other steps and to execute such other documents as may be required by the City in order to accomplish the annexation to the City of the Property. Because approval of sewer plans and permission to connect any portion of the Property to the Grand Junction 201 is contingent on the granting of such a Power of Attorney, the provisions of this paragraph are independent of any other provision in this Agreement and shall survive any termination or invalidation of this Agreement.

13. (a) The developer shall obtain any required governmental approvals, including any approvals from the City, at no cost to the City, for the construction, repair and maintenance of the utilities which are required to serve the Property.

(b) The developer shall pay the Grand Junction 201 Joint Sewer fund (also known as the Persigo 201 Joint Sewer Fund) \$23,923 for its portion of the cost of the sewer line constructed to serve Independence Valley subdivision. Developer shall pay said \$23,923 in full prior to the issuance of the first building permit for any structure to be constructed on any portion of the Property. If for any reason this entire cost has not been paid by Developer on or before July 1, 1996, the unpaid principal balance shall accrue interest at eight percent (8%) per annum simple interest until paid in full.

(c) The payment of such entire cost by the Developer to the Joint Sewer Fund described above shall be in lieu of payment of the adopted Trunk Extension Fee(s).

14. The Developer understands that, except with regard to otherwise applicable Trunk Extension Fees, this agreement does not change or modify Developer's obligations to pay costs, fees and other charges normally charged by the City, or other local governments or utilities, such as plant investment fees, inspection fees, parks/open space fees, sewer

service charges, or any other charges or fees which the City, or another local government, is now charging, or may be charging in the future.

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15. Except as otherwise stated in this Agreement, the City agrees to accept the road widths as specified and the horizontal and vertical alignments of all streets on the Property (and F³/₄ Road) in compliance with the exhibits on file with the City Clerk. For example, Developer has constructed certain roads within the Property with a 26 foot wide asphalt mat while the City's standard is 28 feet. Except for Baseline Road, which shall be constructed with 28 foot asphalt mat, the City agrees to accept such construction of streets with only 26 feet of asphalt mat for all streets, in accordance with the street plan as shown on the attached exhibits. Notwithstanding any contrary provision or plan, all streets shall be constructed with concrete curb, gutter, and sidewalks in accordance with City requirements. City Council's approval of this agreement constitutes the City's waiver of its applicable street standards in this regard. Further, the City will accept construction of all of the subdivision improvements ("infrastructure") for Filing 1 of Country Meadows Subdivision (for example, grading) in accordance with the "Road Improvement Plans" on file with the City Clerk. Except as otherwise stated in this Agreement, for all construction after the date of annexation Developer shall comply with all City technical and engineering standards as they may change from time to time.

16. Developer shall receive credit against the Traffic Capacity Payment, pursuant to and in accordance with the City's Zoning and Development Code, for the costs of construction of improvements made by or for Developer to that portion of Baseline Road extending west from the western boundary of the Property to Independence Valley Drive and for all of F ³/₄ Road.

17. This agreement shall bind the signatory parties and their respective heirs, successors and assigns.

18. Except as otherwise provided herein, the Developer's remedies, upon non-performance by the City pursuant to this Agreement, are limited to the following: the developer shall give notice of default to the City Manager specifying the action giving cause to said default. The City shall have 30 days from its receipt of said notice to correct the alleged default. Upon the correction of said default within the 30 days period the agreement shall be restored and all terms and conditions will be in full force and effect. In the event a default is not timely corrected, the Developer has the right to sue for specific performance, however, in no event shall the City be liable for any damages whether indirect, special or consequential. Each party agrees to pay its own attorney's fees in such event, unless otherwise provided by law.

19. This agreement constitutes the entire agreement of the parties and supersedes any prior discussions, agreements or negotiations.

20. Notice pursuant to this agreement shall be given by certified mail to the address listed under the signature lines or to such other address as a party may hereafter designate by certified mail.

21. The term of this agreement shall be fifteen years from the date of this agreement. If for any reason annexation or development of the Property is not complete by that date, the rights and obligations of the parties under this agreement shall terminate; provided, however, that no actions taken or obligations created by the parties pursuant to this agreement prior to that date shall be affected by expiration of the term of this agreement. For example, if annexation of the Property is completed, expiration of the term of this agreement shall not change or have any other effect on the zoning of the Property (however, the zoning may be thereafter changed in accordance with applicable law), nor shall expiration of the term of this agreement invalidate or terminate any prior or then-existing agreement (such as a Subdivision Improvements Agreement) made by the parties pursuant to this agreement.

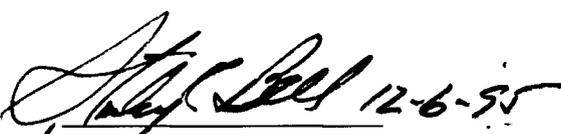
22. At present Developer intends to continue to discharge storm drainage to the Colorado River through and over the lands of others. Developer has not obtained the consent of all affected property owners over which Developer desires to cause storm and surface waste waters in excess of historical flows (rate and volume) to pass. In the event that any such person, or any other person who may be affected thereby, complains or demands that such discharge in excess of historical flows cease, Developer agrees to cease such discharge immediately and further to take such steps as may be required to detain or retain, as required, any such excess waters until such time as (a) Developer has obtained all such persons' consent, or (b) such water can be discharged at historic rates of flow. Developer agrees to hold the City, and its officers and employees, harmless from any claim from any person with regard to such discharge(s).

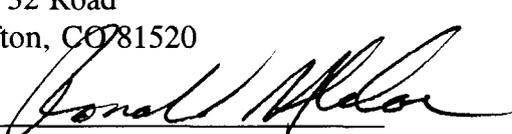
Attest: 

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

Stephanie Nye by
Stephanie Nye
City Clerk
Cheresa J. Martinez
Deputy City Clerk

By: 
Mark K. Achen
City Manager

Attest:

12-6-95
Secretary

Chaparral West, Inc., a
Colorado Corporation
626 32 Road
Clifton, CO 81520
By: 
Ronald A. Abeloe, President *12/6/95*

A parcel of land situated in the NE1/4 NW1/4 of Section 15, Township 11 South, Range 101 West of the 6th P.M., and in the SW1/4 SE1/4 of Section 35, Township 1 North, Range 2 West of the Ute Meridian, more particularly described as follows:
 Beginning at the Southwest corner of fractional NE1/4 NW1/4 of said Section 15,;
 thence South 89°32' East 937.5 feet;
 thence North 2407 feet to the North line of the SW1/4 SE1/4 of said Section 35;
 thence North 89°31' West 938.1 feet to the Northwest corner of said SW1/4 SE1/4;
 thence South 1305 feet to the South Quarter Corner of said Section 35;
 thence East 10.5 feet;
 thence South 0°31' West 1101.5 feet to the place of beginning;
 EXCEPTING the following described parcels:
 PARCEL #1: Beginning at the South Quarter corner of said Section 35,;
 thence East 10.5 feet;
 thence South 0°31' West 1101.5 feet;
 thence South 89°32' East 532.5 feet to the point of beginning;
 thence North 125 feet;
 thence North 66°35' East 200 feet;
 thence North 62°06' East 235.8 feet;
 thence South 0°21' West 318.1 feet;
 thence North 89°32' West 390 feet to the point of beginning;
 AND PARCEL #2: Beginning at the South Quarter Corner of said Section 35;
 thence East 10.5 feet;
 thence South 0°31' West 1101.5 feet;
 thence South 89°32' East 532.5 feet;
 thence North 125 feet;
 thence North 66°35' East 200 feet;
 thence North 62°06' East 235.8 feet to the point of beginning;
 thence North 62°06' East 14.8 feet;
 thence South 325 feet;
 thence North 89°32' West 15 feet;
 thence Northerly to the point of beginning.

MESA COUNTY, COLORADO

Tax Parcels: 2947-152-00-103
 2697-354-00-411

COUNTRY MEADOWS POWER OF ATTORNEY

OWNER(S) Chaparral West, Inc., a Colorado corporation
ADDRESS OF PROPERTY 2036 F 3/4 Road; also described as that
property described in the revised Official Development Plan of
Country Meadows Subdivision recorded in Book 2151 at page 785
LEGAL DESCRIPTION OF PROPERTY See attached metes and bounds legal
description, which includes Filing 1 (already recorded); the tax
parcel numbers are as shown on the attached "Exhibit A."

BE IT KNOWN THAT:

I (We) do hereby designate and appoint the City Clerk of the City of Grand
Junction as my (our) Attorney in Fact granting said City Clerk full power and
authority for me (us) and in my (our) stead to: sign such documents and
instruments as are necessary to cause the above described land(s) to be annexed
to the City of Grand Junction; and to sign any petition(s) for annexation of the
described land(s) to the City, when eligible; and to do and perform any and all
acts which the said City Clerk shall deem necessary, convenient, or expedient to
accomplish said annexation, as fully as I (we) might do if personally present.

The property described herein may be annexed to the City of Grand Junction in
part or parts, at any time. Consent is hereby given to annex portions of tracts
and parcels even if the annexation has the effect of dividing tracts or parcels
into separate parts or parcels.

The authority granted by this instrument shall be a covenant running with the
land(s), shall be binding upon successors in interest and shall not cease upon
my (our) death(s) or the dissolution of marriage, partnership, corporation or
other form of association which may hold title or claim an interest to the
property described herein.

As a further covenant to run with the land, I (we) agree that in the event a
counter-petition to a proposed annexation of the land is prepared, any signature
on such petition purporting to affect the land herein described may be ignored
as of no force and effect by the City under annexation requirements.

IN WITNESS WHEREOF, I (we) have hereunto set my (our) hand(s) and seal this 6th
day of December, 1995.

Chaparral West, Inc., a Colorado Corporation

[Handwritten signature of Ronald A. Abeloe]

By: Ronald A. Abeloe, President

STATE OF COLORADO)
) ss:
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 7th day of
December, 1995 by Ronald A. Abeloe, President of Chaparral West, Inc. a Colorado
Corporation

WITNESS my hand and official seal:

[Handwritten signature of Notary Public]
250 N. 5th Street, Fort Collins CO

Notary Public My Commission expires: 6-13-1999

Notary Seal No Notary Seal
Recorded

A parcel of land situated in the NE1/4 NW1/4 of Section 15, Township 11 South, Range 101 West of the 6th P.M., and in the SW1/4 SE1/4 of Section 35, Township 1 North, Range 2 West of the Ute Meridian, more particularly described as follows:
Beginning at the Southwest corner of fractional NE1/4 NW1/4 of said Section 15,;

thence South 89°32' East 937.5 feet;

thence North 2407 feet to the North line of the SW1/4 SE1/4 of said Section 35;

thence North 89°31' West 938.1 feet to the Northwest corner of said SW1/4 SE1/4;

thence South 1305 feet to the South Quarter Corner of said Section 35;

thence East 10.5 feet;

thence South 0°31' West 1101.5 feet to the place of beginning;

EXCEPTING the following described parcels:

PARCEL #1: Beginning at the South Quarter corner of said Section 35,;

thence East 10.5 feet;

thence South 0°31' West 1101.5 feet;

thence South 89°32' East 532.5 feet to the point of beginning;

thence North 125 feet;

thence North 66°35' East 200 feet;

thence North 62°06' East 235.8 feet;

thence South 0°21' West 318.1 feet;

thence North 89°32' West 390 feet to the point of beginning;

AND PARCEL #2: Beginning at the South Quarter Corner of said Section 35;

thence East 10.5 feet;

thence South 0°31' West 1101.5 feet;

thence South 89°32' East 532.5 feet;

thence North 125 feet;

thence North 66°35' East 200 feet;

thence North 62°06' East 235.8 feet to the point of beginning;

thence North 62°06' East 14.8 feet;

thence South 325 feet;

thence North 89°32' West 15 feet;

thence Northerly to the point of beginning.

MESA COUNTY, COLORADO

Tax Parcels: 2947-152-00-103
2697-354-00-411