

PAR99SMR

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: PARADISE HILLS PARTNERSHIP

SUBJECT/PROJECT: SUMMER HILL PLAN AGREEMENT TO BE IN
PLACE PRIOR TO FINAL APPROVAL OF PRELIMINARY PLAN

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: ~~2003~~

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT

THIS AGREEMENT is made October 6, 1999, by and between PARADISE HILLS PARTNERSHIP ("Developer") and the CITY OF GRAND JUNCTION (the "City"), a Colorado municipal corporation. Developer's address is 1015 N. 7th Street, Grand Junction, CO 81501. The City's address is 250 N. Fifth Street, Grand Junction, CO 81501.

RECITALS

A. Developer is the owner of certain property (the "Property") located within the City concerning which a development application is presently pending. That application is for approval of a preliminary plat and plan for Summer Hill Subdivision (the "Subdivision"), which will include the entire Property. The legal description of the Property is attached as Exhibit A, which is incorporated here by this reference.

B. Plans for the development of the Subdivision are more fully described in the Summer Hill Preliminary Plan ("Plan") prepared by LANDesign, dated January 1999. A copy of the Overall Master Layout (page 3 of 21 of the Plan) of the Subdivision is attached as Exhibit B and incorporated hereby in this reference.

C. The Property is presently zoned RSF-5. Developer's application for approval of the Plan is accompanied by a rezone application to change the zoning of the Property to PR-2.5, which would reduce the density of development of the Property to one-half of the maximum permitted by the existing zoning. This substantially increases the per-dwelling infrastructure costs to Developer associated with the development of the Property because of the requirements contained in the annexation agreement ("Annexation Agreement") by which the Property was annexed to the City.

D. The Annexation Agreement requires improvement of Summerhill Way (referred to in the Annexation Agreement as Paradise Blvd.) in the area extending west from the west boundary of the Property to 26½ Road. The density reduction implemented by the rezone associated with the Plan effectively doubles the per-dwelling unit cost to Developer of that improvement of Summerhill Way. Further reduction in density of the Subdivision in the future, or future increase in infrastructure or required improvement costs associated with noise reduction mitigation described below, is likely to render the development of the Subdivision uneconomical.

E. The City is concerned with impact of noise from the nearby airport on Filings 6, 7, and 8 of the Subdivision as shown on the Plan, even though only 6 units in the entire Subdivision lie within the existing 65 Ldn line on Exhibit B. No portion of the Subdivision lies within the long range 65 Ldn contour (See Exhibit B). There is no existing federal, state or local prohibition against residential construction within the 65 LDN noise exposure area.

G. Despite the fact that: (1) residences may be built within the 65 Ldn noise contour; and (2) no noise mitigation is required outside of that area; and (3) the 65 Ldn noise contour is expected to be outside of the Subdivision in the future (as shown by the long range 65 Ldn contour

shown on Exhibit B), the City is demanding that no dwelling units be built within the existing 65 Ldn noise contour, and that certain noise mitigation construction requirements be incorporated into the dwellings in Filings 6, 7, and 8 of the Subdivision as described in Section 3 of this Agreement; Developer is willing to meet these demands (without reducing the total number of dwelling units in the Subdivision shown on the Plan) upon agreement by the City that no future studies, requirements, mitigation or other actions concerning airport noise will be required in planning, development or construction of all or any part or area of the Subdivision.

H. The City believes that public health, safety and welfare will be substantially benefited by: (1) reduced residential density in the vicinity of the airport critical zone; (2) additional soundproofing in construction of the dwellings in filings 6 through 8 of the Subdivision as those filings are shown on the Plan; and (3) reduced traffic flow on Lanai Drive.

In consideration of their mutual obligations, benefits, duties and promises stated in this Agreement, the parties agree:

TERMS

1. All of the above Recitals are true and are incorporated into this agreement of the parties.
2. Prior to final approval by the City of the Preliminary Plat and Plan of Summer Hill Subdivision, The Plan shall be amended so that no portion of any building envelope in the Subdivision is located within the existing 65 Ldn noise contour line as shown on Exhibit B.
3. All dwelling units within Filings 6, 7, and 8 of the Subdivision shall be constructed with soundproofing in accordance with the FAA report entitled *Guidelines for the Sound Insulation of Residences Exposed to Aircraft Operations (ADA 258 032)* for noise exposure within a 65Ldn area.
4. No future studies, requirements, mitigation or other actions concerning airport noise will be required in planning, development or construction of all or any part or area of the Subdivision, so long as: (a) the overall density of the Subdivision is not increased above that permitted by a PR-2.5 zone; and (b) no building envelope is located within the existing 65 Ldn noise contour line shown in Exhibit B.
5. This Agreement may be recorded in the office of the Clerk and Recorder of Mesa County, Colorado, and, if so recorded, shall run with all the Property and shall be binding upon and inure to the benefit of Developer, the City, and each of their successors and interests and assigns.

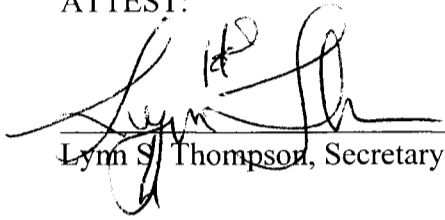
6. The City agrees that, in the absence of those covenants by the City stated in section 4 above:

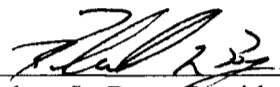
(a) No nexus would exist between Developer's agreements contained in Section 3 of this Agreement and a legitimate government interest; and

(b) The cost of compliance by Developer with those Section 3 requirements would be disproportionate to the impact of that exaction on development of the Property.

PARADISE HILLS PARTNERSHIP,
a Colorado general partnership, by its
general partner BRAY AND CO., a
Colorado corporation

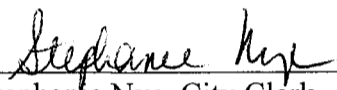
ATTEST:


Lynn S. Thompson, Secretary

By 
Robert L. Bray, President CEO.

CITY OF GRAND JUNCTION

ATTEST:


Stephanie Nye, City Clerk

By 
Mark K. Achen, City Manager

FAWP7368\002\AGREEMT.RK2*

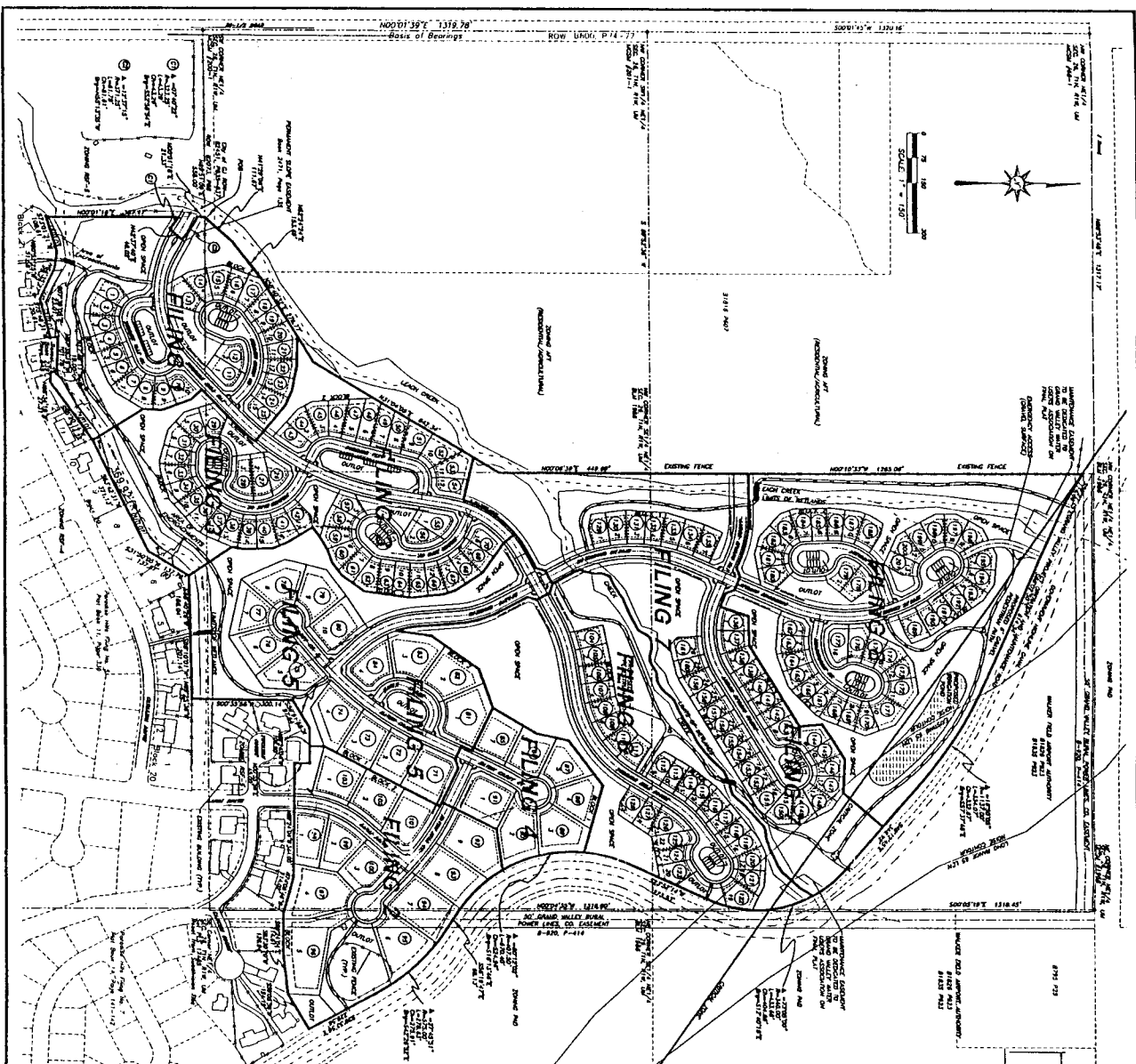


BOUNDARY DESCRIPTION

A tract of land situate in a portion of the Northeast Quarter (NE1/4) and the Southeast Quarter (SE1/4) of Section 26, Township 1 North, Range 1 West of the Ute Meridian and being more particularly described as follows:

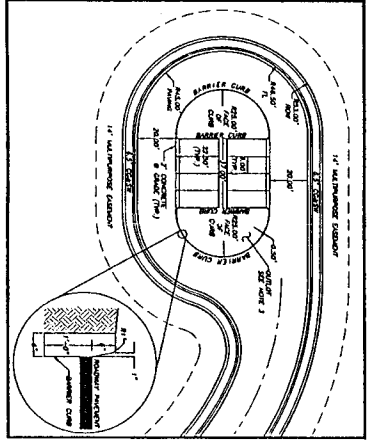
Commencing at the Southwest corner of the NE1/4 of Section 26, T1N, R1W, Ute Meridian, whence the Northwest corner of the SW1/4 NE1/4 bears North 00 degrees 01 minutes 39 seconds East, a distance of 1319.78 feet, for a basis of bearings, with all bearings contained herein relative thereto; thence North 89 degrees 51 minutes 09 seconds East, a distance of 558.00 feet, along the South line of the NE1/4 to the POINT OF BEGINNING; thence North 41 degrees 29 minutes 06 seconds East, a distance of 111.67 feet; thence North 52 degrees 24 minutes 24 seconds East, a distance of 153.69 feet; thence North 58 degrees 40 minutes 32 seconds East, a distance of 276.77 feet; thence North 31 degrees 04 minutes 05 seconds East, a distance of 642.34 feet, to a point on the West line of the SE1/4 NE1/4 of said Section 26; thence North 00 degrees 06 minutes 39 seconds East, a distance of 449.69 feet, along the West line of the SE1/4 NE1/4 of said Section 26 to the Northwest corner of the SE1/4 NE1/4 of said Section 26; thence North 00 degrees 10 minutes 33 seconds West, a distance of 1285.06 feet, along the west line of the NE1/4 NE1/4 of said Section 26 to a point on the Southerly and Westerly right-of-way line of the Highline Canal; thence along the Southerly and Westerly line of the Highline Canal the following ten (10) courses: (1) South 59 degrees 27 minutes 15 seconds East, a distance of 114.66 feet; (2) South 66 degrees 02 minutes 50 seconds East, a distance of 614.34 feet; (3) along the arc of a curve to the right, having a central angle of 16 degrees 50 minutes 05 seconds, with a radius of 1137.00 feet, an arc length of 334.07 feet, a chord bearing of South 57 degrees 37 minutes 48 seconds East, and a chord length of 332.87 feet; (4) South 49 degrees 12 minutes 45 seconds East, a distance of 346.92 feet; (5) along the arc of a curve to the right, having a central angle of 73 degrees 05 minutes 00 seconds, with a radius of 340.00 feet, an arc length of 433.68 feet, a chord bearing of South 12 degrees 40 minutes 16 seconds East, and a chord length of 404.88 feet; (6) South 23 degrees 52 minutes 14 seconds West, a distance of 273.53 feet; (7) along the arc of a curve to the left having a central angle of 80 degrees 12 minutes 02 seconds, with a radius of 407.50 feet, an arc length of 570.40 feet, a chord bearing of South 16 degrees 13 minutes 46 seconds East, and a chord length of 524.96 feet; (8) South 56 degrees 19 minutes 47 seconds East, a distance of 68.13 feet; (9) along the arc of a curve to the right, having a central angle of 27 degrees 45 minutes 51 seconds, with a radius of 575.00 feet, an arc length of 278.63 feet, a chord bearing of South 42 degrees 26 minutes 52 seconds East, and a chord length of 275.91 feet; (10) South 28 degrees 33 minutes 56 seconds East, a distance of 229.56 feet; thence along the Northerly and Westerly boundary of Paradise Hills, Filing No. 7, as recorded in Plat Book 14, Pages 141-142, the following nine (9) courses: (1) South 59 degrees 05 minutes 56 seconds West, a distance of 124.19 feet; (2) South 83 degrees 30 minutes 20 seconds West, a distance of 126.94 feet; (3) North 89 degrees 24 minutes 04 seconds West, a distance of 114.61 feet; (4) North 74 degrees 08 minutes 46 seconds West, a distance of 114.02 feet; (5) North 89 degrees 24 minutes 04 seconds West, a distance of 344.00 feet; (6) North 00 degrees 35 minutes 56 seconds East, a distance of 45.00 feet; (7) North 89 degrees 24 minutes 04 seconds West, a distance of 106.90 feet; (8) South 59 degrees 51 minutes 55 seconds West, a distance of 97.84 feet; (9) South 00 degrees 35 minutes 56 seconds West, a distance of 300.14 feet; thence along the Northerly boundary of Paradise Hills, Filing No. Five, as recorded in Plat Book 11, Page 330, the following seven (7) courses: (1) North 89 degrees 25 minutes 36 seconds West, a distance of 4.35 feet; (2) South 89 degrees 10 minutes 01 seconds West, a distance of 201.14 feet; (3) South 88 degrees 40 minutes 26 seconds West, a distance of 166.04 feet; (4) South 31 degrees 50 minutes 05 seconds West, a distance of 137.78 feet; (5) South 63 degrees 42 minutes 31 seconds West, a distance of 371.13 feet; (6) South 55 degrees 20 minutes 14 seconds West, a distance of 214.22 feet; (7) North 88 degrees 34 minutes 18 seconds West, a distance of 27.31 feet; thence along the boundary of Parcel 2, as described in Book 2391, Page 843, the following three (3) courses: (1) North 17 degrees 49 minutes 11 seconds West, a distance of 19.00 feet; (2) North 87 degrees 35 minutes 19 seconds West, a distance of 101.78 feet; (3) South 07 degrees 39 minutes 05 seconds East, a distance of 23.01 feet; thence along the Northerly boundary of Paradise Hills, Filing No. Five, as recorded in Plat Book 11, Page 330, the following four (4) courses: (1) South 75 degrees 48 minutes 31 seconds West, a distance of 120.61 feet; (2) North 64 degrees 35 minutes 27 seconds West, a distance of 99.25 feet; (3) North 80 degrees 52 minutes 25 seconds West, a distance of 51.58 feet; (4) South 73 degrees 01 minutes 21 seconds West, a distance of 109.61 feet; thence North 00 degrees 01 minutes 18 seconds East, a distance of 387.17 feet to a point on the southerly right-of-way line of Paradise Hills Boulevard; thence following said southerly right-of-way line along the arc of a non-tangent curve to the right, having a central angle of 07 degrees 40 minutes 22 seconds, with a radius of 323.25 feet, an arc length of 43.29 feet, a chord bearing of South 52 degrees 58 minutes 54 seconds East, and a chord length of 43.26 feet; thence following said right-of-way line, North 42 degrees 37 minutes 40 seconds East, a distance of 48.02 feet; thence following the northerly right-of-way line of Paradise Hills Boulevard, along the arc of a non-tangent curve to the left, having a central angle of 12 degrees 37 minutes 15 seconds, with a radius of 371.25 feet, an arc length of 81.78 feet, a chord bearing of North 55 degrees 13 minutes 35 seconds West, and a chord length of 81.61 feet; thence North 00 degrees 01 minutes 18 seconds East, a distance of 21.33 feet to the POINT OF BEGINNING.

Said parcel containing an area of 80.518 Acres, as described.

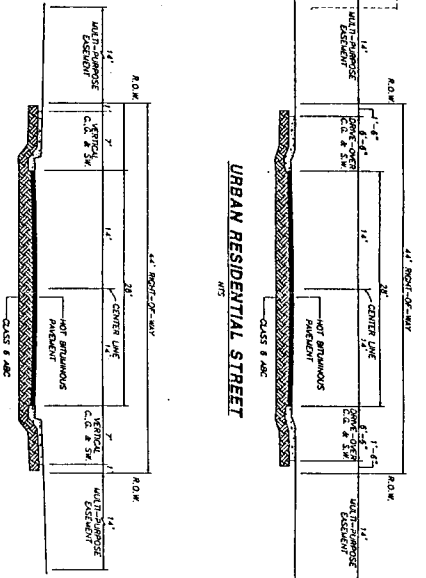


- DATE REVISIONS**
- | NO. | DATE | REVISION |
|-----|----------|----------------------------|
| 1 | 02/22/99 | REVISE PER REVIEW COMMENTS |
| | | |
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| | | |
- NOTES**
- EXISTING AND LOW RISE AS LOW RISE CONTAIN OBTAINED FROM SUMMIT WATER PLANT COMPANY ASSOCIATES INC. DATE 1997 BY
 - LOTS THAT HAVE PROVIDED ON SUMMIT MAP, BUT NOT ALSO HAVE PROVIDED ON SUMMIT MAP ACCESS OR OF THIS RESIDENTIAL STREET
 - OUTSIDE ROUNDED WITH C&G-S&S AND SHADING AREAS WILL BE PROVIDED TO THE HOMEOWNERS ASSOCIATION ON THE FINAL PLAN.
 - LOT #4 SHALL OWN ACCESS FROM THE
 - RESIDENTIAL STREET

TYPICAL CUL-DE-SAC DETAIL



SUMMER HILL WAY ONLY



LAND USE SUMMARY

LAND USE	ACRES	PERCENT
LOTS	1.69	4.48
OUTLOTS	78.01	21.48
OPEN SPACE	24.48	6.48
ROAD	66.32	18.02
TOTAL LOTS	80.1	21.98

SHEET 3 OF 21

LANDesign
ENGINEERS • SURVEYORS • PLANNERS
258 GRAND AVENUE
GRAND JUNCTION, COLORADO 81501 (970) 245-4098

SUMMER HILL
PROJECT NO: 98065 FILE NAME: 98065-PP-MSR-LAYOUT-3

OVERALL MASTER LAYOUT
DATE: JANUARY 1999 DRAWN: MHW CHK'D: GLL

DATE	NO.	REVISION	BY
02/22/99	1	REVISE PER REVIEW COMMENTS	MHW