

SGH05WTR

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	SGH COMPANY, LLC
SUBJECT/PROJECT:	USE OF THE CITY WATER TREATMENT PLANT BACKWASH WATER TO BE USED TO IRRIGATE THE COMMON AREA OF SPY GLASS RIDGE FILING 1
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	2005
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

AGREEMENT FOR WATER FOR IRRIGATION

This Agreement is between the City of Grand Junction, a Colorado Home Rule Municipality, ("City") and SGH Company, LLC, a Colorado Limited Liability Company, ("Developer") this 8th day of October 2005.

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. Exhibit A is incorporated herein as if fully rewritten. Developer is presently subdividing the Property. Developer is creating lots for residential use. The development is to be known as and shall be referred to herein as Spyglass Ridge. The development shall be a common interest community with a homeowners association.

The City's water treatment plant is located on the northwest edge of Spyglass Ridge. The City currently backwashes its filters at the water treatment plant. Developer has requested the City make available the backwash water to be used to irrigate the common area of Spyglass Ridge subdivision. The common area shall be owned by the Spyglass Ridge Homeowners Association, Inc. ("HOA"). The City uses the backwash water to irrigate the cemeteries. The City has extra capacity of the backwash water available. The City has concluded that Grand Junction would be well served if backwash water was made available to the Developer for a cost and based on the terms of this Agreement.

In addition, the City has landscaping that it irrigates located on the east side of the water treatment plant. The City has agreed that if the Developer plants trees as a visual barrier of the water treatment plant in the area described in Exhibit B, which is attached hereto and incorporated herein, and installs, maintains, and replaces the trees, then the City will irrigate the area described in Exhibit B with the same irrigation water that it uses at no cost to the Developer for irrigation of the trees as long as the City continues to irrigate the City's landscaping located on the east side of the water treatment plant near the northwest corner of the Property. If the City no longer irrigates its own landscaping or no longer has landscaping in that area, then the Developer may use the backwash water to irrigate the trees in the land area described in Exhibit B. At any time, if the Developer prefers, the Developer may use the backwash water to irrigate this land area in accordance with this Agreement.

The parties acknowledge and agree that there is adequate consideration for this agreement. The parties agree as follows:

1. For conveyance of the backwash water, Developer shall pay all costs for the design, inspection, and construction of a pump station at the water treatment plant and the appurtenant facilities, including but not limited to, pipelines, from the Pump Station to the Property ("Pump Station"). The City must approve the design, construction, and

location of the Pump Station. In accordance with the other terms of this Agreement, the backwash water shall be available for use upon the initial acceptance of the Pump Station by the City Engineer.

2. One year following substantial completion of construction and approval by the City of the as-built drawings for the Pump Station, if the Pump 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, and the Pump Station has been constructed in accordance with the standards set by the City Engineer, the City will accept the Pump Station. 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 Pump Station (this shall be referred to as "Final Acceptance"). Until Final Acceptance, the Developer shall pay all costs associated with the maintenance and operation of the Pump Station, as required by the City. Upon Final Acceptance, the City shall thereafter own, operate and maintain the Pump Station.

3. Developer shall be responsible for all installation, maintenance and repair of the appurtenant facilities on the Property.

4. The City shall supply the backwash water to the Developer for Spyglass Ridge for irrigation of the common area in the subdivision as long as the City's water plant has backwash water available. The City shall operate the backwash water supply in the following order: first to the City's cemetery and then second to the Developer for Spyglass Ridge as long as delivery is reasonably possible, and the City has been timely paid for the backwash water. The Developer shall contact the City's Water Services Superintendent regarding operation of the backwash water, if any questions or concerns.

5. The cost of the backwash water to the Developer shall commence at \$.70 per 1000 gallon. An invoice shall be provided on a monthly basis and the charges are due upon receipt.

6. The cost of the backwash water supplied will be reviewed when the City reviews other water rates, but no more often than annually. The charge for the backwash water will be given the same consideration as the cost for the backwash water provided to the cemetery. By no later than November 1 of each year the City agrees to give the Developer or the HOA, whichever is appropriate, notice of any such changes; however the failure to give such notice shall not limit the City's ability to change the rates nor limit in any way the duty to pay such increased rates.

7. If the City no longer has backwash water available at the water treatment plant and is not expected to have the backwash water available indefinitely, then the City agrees that it will negotiate in good faith with the Developer to provide other water if reasonably available. Any cost for conveying the water to the Property will be the Developer's and the Developer shall be responsible for all cost of the use of the water as determined by the City.

8. Developer shall pay all costs for the design, inspection, and construction of the water drip system for the irrigation of the trees located in the area described in Exhibit B. The City must approve the design, construction, and location of the facilities for the drip system that are on City property. Developer shall coordinate with the Water Services Superintendent in connecting with the City's irrigation system. Developer shall be responsible for the repair and maintenance of the water drip system related to the development. The Developer shall contact the City's Water Services Superintendent regarding operation of the irrigation drip system on City's property, if any questions or concerns.

9. 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, arising out of this Agreement, including but not limited to, injury or damage received or sustained by any person or entity in connection with or on account of the performance or nonperformance of work at the Property or on the City property, the operation of the Pump Station, delivery of backwash water or lack of delivery of backwash water, delivery of irrigation water and/or lack of delivery of irrigation water. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning this Agreement. Developer shall 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 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.

10. 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 the Pump Station.

11. 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 his/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

12. 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. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

13. Except for a Development Improvements Agreement, if any required by the City for the construction of the Pump Station, this Agreement, together with the exhibits and attachments hereto constitutes the entire Agreement between the parties. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

14. Developer may assign all its rights and interests in this Agreement to the HOA upon Final Acceptance of the Pump Station. Until the assignment is made, Developer shall be responsible for all costs incurred under this Agreement. 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. The City shall not withhold approval of the assignment to the HOA as long as the Developer has complied with the terms of this Agreement.

15. Any notice required or permitted by this Agreement shall be deemed effective three 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
If to City:	Public Works Director 250 North 5th Street Grand Junction, CO 81501
Cc:	Office of the City Attorney 250 North 5th Street Grand Junction, CO 81501

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

17. The laws of the City of Grand Junction, Mesa County, Colorado, shall govern this Agreement.

18. Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives its right to bring such action in or to remove such action to any other court whether state or federal.

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

Janita Peterson
Notary Public

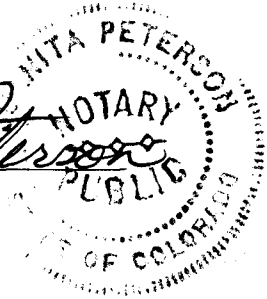


EXHIBIT A

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.

EXHIBIT B

PROPERTY DESCRIPTION

A parcel of land situated in the SW1/4 SE1/4 of Section 26, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

Beginning at the aluminum cap PLS 18480 for the center-south one-sixteenth corner of said Section 26;
Thence along the North line of the SW1/4 SE1/4 of said Section 26, South 89°52'46" East, a distance of 300.00 feet;
Thence South 00°07'14" West, a distance of 30.00 feet;
Thence thirty feet south of and parallel with the North line of the SW1/4 SE1/4 of said Section 26, North 89°52'46" West, a distance of 269.74 feet;
Thence thirty feet east of and parallel with the West line of the SW1/4 SE1/4 of said Section 26, South 00°22'10" East, a distance of 369.74 feet;
Thence South 89°37'50" West, a distance of 30.00 feet to the West line of the SW1/4 SE1/4 of said Section 26;
Thence along said West line, North 00°22'10" West, a distance of 400.00 feet to the Point of Beginning.

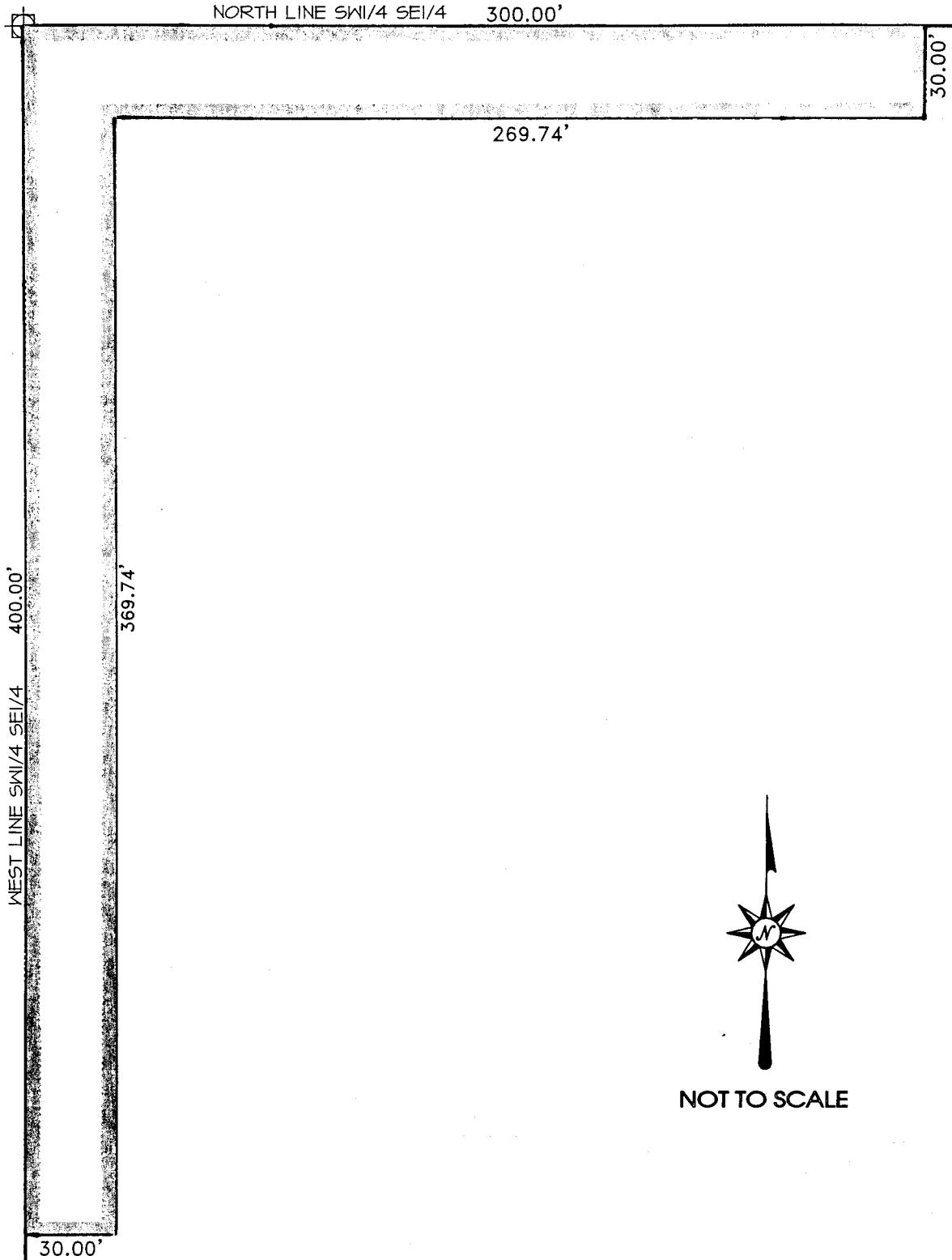
Containing 0.461 Acres, more or less.

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

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EXHIBIT B

C-S 1/16 CORNER S.26
3" ALUM CAP
PLS18480



This exhibit is a graphical representation of a written description, and is provided for information only. It is not to be relied upon for boundary or title matters. It is not intended to be a legal document and does not replace, correct or supersede the attached easement description.