



DEVELOPMENT IMPACT AGREEMENT

THIS AGREEMENT is made and entered into as of the date of the party last signing same (the "Effective Date") by and between **Durango Fire and Rescue Authority** (the Fire Authority), **Animas Fire Protection District** ("Animas") and **Gorton Family Partnership, LLLP**, a Colorado Limited Liability Limited Partnership ("Gorton").

RECITALS

A. Edgemont Ranch.

1. 2003 Amended Master Plan. The Board of County Commissioners of the La Plata County (the BOCC) has approved "Edgemont Ranch Amended Conceptual Development Plan 2003-137 (F.K.A. Edgemont Ranch Master Plan 1996-128)" referred to herein as the "2003 Amended Master Plan."

2. Edgemont Ranch Unit 2. Edgemont Ranch Unit 2 as depicted on the 2003 Amended Master Plan is owned by Gorton Family Partnership, LLLP, as more particularly described on **Exhibit A**, attached hereto and made a part hereof by this reference. Edgemont Ranch Unit 2 is approved under the 2003 Amended Master Plan for construction of a residential community of up to 1033 homes.

3. Edgemont. The original development known as "Edgemont" was the subject of a 1983 Master Plan, amended in 1996 and was planned to be 2240 units (the "Original Edgemont Project Concept"). Only Edgemont Ranch Unit 1 (as shown on the 2003 Amended Master Plan) has been developed. For purposes of this Agreement, Unit 1, Unit 2 and Unit 3 as shown on the 2003 Amended Master Plan, is referred to collectively as "Edgemont" and each Unit as shown thereon is referred to separately by reference to its Unit number.

B. The Fire Authority. Fire protection services for Edgemont are provided by the Fire Authority. The fire station at the Southwest corner of County Roads 240 and 234 (the "Fire Station" is owned by Animas Fire Protection District, operated and maintained by the Fire Authority, and is the closest fire station to Edgemont. The predecessor in interest to the Fire Authority approved the Original Edgemont Project Concept upon conditions set forth in a letter dated October 5, 1982 (the "Original Conditions"), which conditions have not been satisfied.

C. Development Impact. As Unit 2 and Unit 3 of Edgemont develop there will be an increased demand for fire protection services. The Fire Authority has not established a development impact fee for application to new development within its service area or district boundaries. The Fire Authority plans to develop such an impact fee. For purposes of this Agreement, such impact fee is referred to herein as the "General Impact Fee." In the absence and in lieu of the establishment of a General Impact Fee, the parties intend by this Agreement to establish a fair method of contribution to the Fire Authority to meet the impact of the development of Unit 2 and Unit 3 of Edgemont for fire protection, rescue and emergency services provided by the Fire District and agree that the fees and payments described by this Agreement bear a reasonable relationship to the need for improvements necessitated by the development of Unit 2 and Unit 3.

Return to Ted Wright

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. **Acknowledgment of Recitals.** The parties hereto acknowledge the recitals above stated and recognize the same as true and correct.
2. **Development Impact Fee.**
 - a. **Imposition of the Fee.** Prior to the issuance of a building permit for a structure which contains one or more residential units in Unit 2, the owner of the property for which the building permit is sought shall pay to the Fire Authority the sum of \$1000 for each residential unit (the "Development Impact Fee"). For purposes of this Agreement, a "residential unit" shall be a residential dwelling (house, condominium, town home, apartment, etc.) with one kitchen. A kitchen is defined as any area having facilities for cooking and dishwashing. If a residential dwelling has more than one kitchen, the number of residential units represented by such residential dwelling for purposes of determining liability for Development Impact Fees shall be equal to the number of kitchens contained therein. By way of example, a residential dwelling containing two (2) kitchens is required to pay \$2000 as a Development Impact Fee. In the event of a remodel of a residential unit which adds a kitchen or the addition of detached residential dwelling with a kitchen on a lot already containing a residential unit, the Development Impact Fee shall be payable in the same manner as directed above with respect to original construction.
 - b. **Termination of the Fee.** The Development Impact Fee shall expire with respect to residential development in Unit 2 upon the payment of Development Impact Fees for 550 residential units, or their equivalent, within Unit 2.
 - c. **General Impact Fee.** Notwithstanding anything herein to the contrary, the 550 residential units within Unit 2 which are required to pay the Development Impact Fee shall be exempt from any General Impact Fee. All residential units within Unit 2 and Unit 3 which do not pay the Development Impact Fee provided for by this Agreement (the "Exempt Residential Units") shall be required to pay the General Impact Fee only upon the condition that General Impact Fee has been established prior to the time a building permit is issued for such Exempt Residential Units.
3. **Approval of Residential Development of Unit 2 and Unit 3.** Subject to compliance with the terms of this Agreement, the specifications of the Fire Authority with respect to residential development as contemplated by the 2003 Amended Master Plan and all applicable fire code requirements, the Fire Authority agrees to approve all land use submittals made for residential developments upon Unit 2 and Unit 3. All comments to the BOCC and the Department of Planning Services of La Plata County, Colorado regarding said land use submittals shall be consistent with this Agreement.
4. **Lump Sum Payments.** In addition to and not in lieu of the Development Impact Fees described above, Gorton shall make the following lump sum payments to the Fire Authority:
 - a. **Payment One.** The sum of \$100,000 upon recording of the final BOCC approved plat of the first phase of development under the 2003 Amended Master Plan (the "First Plat"); and
 - b. **Payment Two.** The sum of \$100,000 upon the earlier of closing of the sale of the 50th single family lot within Unit 2 or 24 months from the date of Payment One above.

The foregoing payments are referred to herein as the "Lump Sum Payments." In no event will final plats for any phase or portion of Unit 2 or Unit 3 except Phase 1 of Unit 2 be recorded until Payment Two has been made.

5. **Fire Station Improvement Fund.** The Lump Sum Payments shall be deposited into Fire Authority accounts and shall be restricted for use in connection with the improvement of the Fire Station, located at CR 234 and 240, i.e., Station 5, Edgemont Station.

6. **Commercial Development on Unit 2.** The Fire Authority agrees to apply a Development Impact Fee with respect to commercial development on Unit 2 which is reasonably equivalent to that established by this Agreement for residential development on Unit 2. The following table will be followed:

Commercial Classification.

- | | | |
|-----|---|------|
| (1) | Transient Residential Units. Hotels, motels, cabins including employee housing, and recreational vehicle parks. | |
| a. | Manager's unit:
Use multi-family or single-family classification as applicable per unit. | |
| b. | Motels, hotels and rooming houses without kitchen facilities: | |
| | - Units with not more than two bed spaces (per each rental room) | 0.25 |
| | - Units with more than two bed spaces per room (per additional two bed spaces) | 0.10 |
| c. | Motels, hotels and rooming houses with kitchen facilities: | |
| | - Units with not more than two bed spaces per unit (per each rental unit) | 0.40 |
| | - Units with more than two bed spaces per unit (per each rental unit) | 0.50 |
| d. | Dormitories (per each rental bed unit) | 0.10 |
| e. | Recreational vehicle parks | 0.40 |
| (2) | Restaurants and Bars. Restaurants, bars, lounges and banquet rooms. | |
| a. | Restaurants and bars (per 10 seats) | 0.65 |
| b. | Banquet rooms (per 10 seats) | 0.35 |
| (3) | Commercial Buildings. Office buildings, retail sale buildings, multiple use buildings, shops, garages and similar facilities. | |
| a. | Offices and office buildings (per 1,000 S.F. of gross occupied space) | 0.65 |
| b. | Retail sales area (per 1,000 S.F. of gross sales display area) | 0.35 |
| c. | Non-retail work areas including, but not limited to, garages, machine shops and warehouse (per 1,000 S.F.) | 0.20 |

Any such Development Impact Fee shall terminate when the equivalent of 550 residential units have paid the Development Impact Fee pursuant to paragraphs 2 or 6 of this Agreement.

7. **Development Cooperation.** Upon delivery of the necessary implementing documentation, Animas agrees to dedicate land no more than 20 feet in width adjacent to the northern boundary of the Fire Station site parallel with County Road 240, as and when needed, to accommodate a right turn deceleration lane for eastbound traffic on County Road 240 turning southbound onto County Road 234. As and when the deceleration lane is built Gorton Family Partnership LLLP will be responsible to assure that the property is restored, and functional up to and including retaining walls, guardrails and drainage.
8. **Recording.** The original of this Agreement shall be recorded in the Real Estate Records of La Plata County, Colorado and the original recorded copy returned to Gorton.
9. **Additional Documents.** The parties hereto agree to execute and deliver any additional document that may be reasonably required to complete and execute the responsibilities of the parties as set forth herein.
10. **Interpretation.** This Agreement supersedes the Original Conditions with respect to Edgemont and all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreement. The fact that either party drafted this Contract, or any portion thereof, shall not be utilized as evidence in any proceeding to interpret its terms. In this Agreement, wherever the context so requires, the singular number includes the plural. If any provisions of this Agreement be held to be void or unenforceable under the laws of any place governing its construction or enforcement, this Agreement shall not be void or vitiated thereby, but shall be construed to be in force with the same effect as though such provisions were omitted.
11. **Waiver.** It is specifically understood by and between the parties to this Agreement that in the event of any breach of any clause of this Agreement, and the waiver thereof by any party, such waiver shall not constitute a condonation of such breach, nor shall it be considered as a waiver of any other provision or the same provision of this Agreement at any other time.
12. **Amendment.** No amendment or modification of this Agreement shall be valid or binding unless expressed in writing and executed by the parties hereto in the same manner as the execution of this Agreement.
13. **Attorney's Fees.** Should any litigation be commenced between the parties to this Agreement, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in such litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.
14. **Interest.** Any past due amount shall bear interest at the rate of 18% per annum.
15. **Governing Law.** This Agreement is made and shall be governed by and interpreted in accordance with the laws of the State of Colorado.
16. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, assigns and personal representatives of the parties hereto, including but not limited to a special district, including but not limited to Animas, which provides fire protection services for Unit 2 and Unit 3 in lieu of the Fire Authority.

17. **Notices and Communications.** Any notice, payment, request, instruction, or other document delivered under this agreement shall be deemed sufficiently given if in writing and delivered personally or mailed via U.S. mail, postage prepaid, to:

Fire Authority: Durango Fire and Rescue Authority
142 Sheppard Drive
Durango Colorado 81303

With Copy To: Robert E. Crane
Crane, Leake, Ehlers & Eggleston, P.C.
102 W. 18th Street
Durango, CO 81301

Gorton: Gorton Family Limited Partnership
3883 County Road 207
Durango, CO 81301

With Copy To: Ted C. Wright
Attorney at Law
160 E. 12th Street, Suite 7
Durango, CO 81301

Each party may change its address by like notice. The effective date of such notice shall be its mailing date.

18. **Authority.** The undersigned parties to this agreement warrant and represent that they have the power and authority to enter into this agreement in the names, titles and capacities herein stated and on behalf of any entities, persons or firms represented or purported to be represented by such respective parties.

19. **Counterparts and Facsimile Transmission.** This agreement may be executed in several counterparts, each of which shall constitute the same agreement. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as transmission of an original.

Gorton:

Date: 1/8/04

GORTON FAMILY PARTNERSHIP, LLLP, a Colorado Limited Liability Partnership

By [Signature]
THOMAS D. GORTON A General Partner

Date: 1/8/04

By [Signature]
DEBORAH A. GORTON A General Partner

Fire Authority:

Attest: [Signature]
Secretary

DURANGO FIRE AND RESCUE AUTHORITY

By [Signature]
Title: Chairman

Date: 11-20-03

Attest: [Signature]
Secretary

ANIMAS FIRE PROTECTION DISTRICT

By [Signature]
Title: Chairman

Date: 11-10-03

STATE OF COLORADO)
) ss.
County of La Plata)

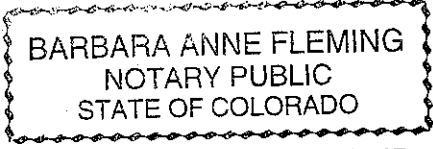
The foregoing instrument was acknowledged before me this 20th day of November, 2003, by Barbara Anne Fleming as Secretary and

_____ as _____ of Durango Fire and Rescue Authority.

Witness my hand and official seal.

My commission expires: 5/14/2007

[Signature]
Notary Public



My Commission Expires 05/14/2007

STATE OF COLORADO)
) ss.
County of La Plata)

The foregoing instrument was acknowledged before me this 20th day of November, 2003, by Barbara Anne Fleming as Secretary and _____ as _____ of Animas Fire Protection District.

Witness my hand and official seal.
BARBARA ANNE FLEMING
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 05/14/2007

My commission expires: 5/14/2007
Barbara Anne Fleming
Notary Public

STATE OF COLORADO)
) ss.
County of La Plata)

The foregoing instrument was acknowledged before me this 8th day of ~~November~~ January 2004, 2003, by Thomas D. Gorton and Deborah A. Gorton as General Partners of Gorton Family Limited Partnership, LLLP, a Colorado Limited Liability Limited Partnership.

NOTARY PUBLIC
STATE OF COLORADO

Witness my hand and official seal.

My commission expires: 6/15/07

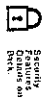
Notary Public

HIGHLANDS DEVELOPMENT I, LLC
211 ROCK POINT DRIVE SUITE 107
DURANGO, CO 81301

2020
82-244/1070

10/19/04
DATE

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PAY TO THE ORDER OF Durango Five Reserve Authority \$ 100,000⁰⁰
One hundred thousand and No/100 DOLLARS 


Bank of Colorado
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Durango, CO 81302-2950
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