

SUBDIVISION IMPROVEMENTS AGREEMENT
FOR
PARK EAST SUBDIVISION

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RETURN TO:
CHAFFIN/LIGHT ASSOCIATES, INC.
P.O. BOX 620

**SUBDIVISION IMPROVEMENTS AGREEMENT
FOR
PARK EAST SUBDIVISION**

THIS AGREEMENT is made this ____ day of _____, 1999 by and between the City of Glenwood Springs, Colorado (the "City"), a home rule municipality within the State of Colorado, and CLH Properties, LLC, a Colorado limited liability company ("Developer").

RECITALS:

A. Developer is the owner in fee simple of approximately 38 acres of real property situated within the City, more particularly described in Exhibit "A", attached hereto, and incorporated herein by this reference. In this agreement the property described in Exhibit "A" shall be referred to as "Park East" and is the same real property as that depicted on the Final Plat for Park East Subdivision (the "Plat").

B. Developer desires to develop Park East.

C. On May 25, 1999 the City of Glenwood Springs Planning and Zoning Commission recommended to the City Council approval of a major subdivision and design variance application ("Application") which was subject to certain conditions. The design variance permitted sidewalks to be located only on one side of the street in certain areas of Park East as set forth on the Plat. The City Council approved the Application on June 17, 1999.

D. Obtaining Plat approval will add to the value of the Developer's land and will inure to the Developer's benefit and the Developer recognizes and acquiesces to the jurisdiction of the City to impose the restrictions and conditions as set forth in this Agreement and to perform every one of them.

NOW, THEREFORE, in consideration of the premises and the terms and conditions herein stated and for other valuable consideration, the adequacy of which is acknowledged by the parties hereto, it is agreed as follows:

1. Intent. It is the intent of the parties that this Agreement shall constitute a development agreement (as referenced in C.R.S. § 24-68-104) which establishes the rights and obligations of each party with respect to Park East and, in particular, describes the understandings of the parties with respect to the development and operation of Park East. The parties also agree and acknowledge that it is their intent that this Agreement shall be enforceable, and that Developer, the Council and the City hereby waive any objection to the enforcement of this Agreement as a contractual obligation. Thus, this Agreement is intended to provide a contractual relationship between the Developer and the City to ensure compliance with all requirements contained herein. The provisions of this Agreement are restatements of certain obligations of the Developer established during the City's land use review process, obligations

imposed by State, federal or other law, or are separate provisions resulting from negotiations between the parties.

2. Subdivision Improvements / Cost Estimates. Estimated costs for the proposed improvements to the infrastructure within Park East (the "Public Improvements") are described in Exhibit "C", attached hereto and incorporated here by this reference. A list of the exactions or other improvements required by the City not directly related to the real property underlying Park East (the "Offsite Improvements") and their costs are described in Exhibit "D", attached hereto and incorporated herein by this reference.

3. Developer's Guarantee. Developer hereby guarantees the installation, as hereafter provided and as necessary to serve Park East, and payment therefor, of all common roads, all utility lines, storm drainage improvements and storm sewers, and any other improvements required to be constructed by the Developer as identified in Exhibits "B", "C" and "D". In the event such installation is not completed substantially within the time limits required by the Final Approval, and according to the Plans and Specifications, the City shall have the right to cause such work to be done as is necessary to complete the installation in such manner and Developer shall be liable for the cost of such additional work. The City shall first utilize the letter of credit provided to guarantee the Developer's obligation to perform a certain duty hereunder, for the purpose of completing that performance. Upon completion of the Public Improvements, Developer shall provide City with as-built drawings and certification by an engineer that the Public Improvements have been substantially completed. The Developer or its contractor shall provide a one-year construction warranty, following which City shall take over all maintenance of the Public Improvements.

4. Financial Assurances. Upon execution of this Agreement, Developer shall provide the City with one or more letters of credit in an amount equal to the total of the amounts set forth in Exhibits "C" and "D". The provider(s) of each letter of credit, and their form and substance, shall be satisfactory to the City. The letters of credit shall be for the purpose of assuring Developer's full performance of its obligations hereunder and payment by Developer of the cost of installing all improvements required to be paid for by Developer and to insure other performance of the Developer required hereunder, and shall be payable to the City or its designee.

On a monthly basis, for each line item outlined on the Engineers Opinion of Probably Construction Cost included in Exhibit "C", Developer may request that the amount of a letter of credit be reduced (after satisfaction of the current request) by 90% for work fully completed. Each request must be supported by a letter provided by a registered engineer. The City shall confirm the amount of the reduction with the Developer and the issuer of the letter of credit within ten (10) days of the inspection, approval and acceptance of the work by the City Engineer or utility company, as applicable. The remaining 10% of the letter of credit for a line item shall be reduced when the proposed improvements or performance secured by that letter of credit are completed and approved by the City Engineer (based on notices of completion and acceptance by utility companies, as and if applicable) or other representative of the City.

On a monthly basis, for each line item included in Exhibit "D", Developer may request that the amount of a letter of credit be reduced by any amounts paid by Developer for that purpose during the month. The City shall confirm the amount of the reduction with the Developer and the issuer of the letter of credit within five (5) days of a request to do so by Developer.

5. Inspection. The City may enter any portion of the subdivision for the purpose of making inspections to determine whether the Developer is in compliance with the obligations set forth in this Agreement. Developer shall retain an on-site engineer for inspections during the construction of Public Improvements. If the City determines that any Public Improvements as set forth in this Agreement have not been constructed and installed as required, the City shall furnish the Developer with a list of specific deficiencies. Except as otherwise set forth herein, the City shall not be required to issue any final certificate of occupancy so long as the list of deficiencies remain. If the City determines the Developer has not cured the deficiencies nor presented the City an acceptable plan for cure within thirty (30) days after presentation of the list to the Developer, the City may, but need not, cause such additional work to be done as it deems necessary to complete any Public Improvements or to cure any listed deficiencies. Developer shall be liable to the City for the entire cost of such additional work, whether performed by the City's employees or by others at the direction of the City. If the Developer does not pay the City the costs of such additional work including, as may be appropriate, the cost the City expends for materials, for services of those not employed by the City, and for the apportioned cost of wages and benefits paid for by the City for hours of the City Employees, then the City may, upon ten (10) days notice to the Developer, have a lien against all or any part of the Phase of the development under construction still owned by Developer. The City may certify the amount of such lien to the Garfield County Treasurer for collection, enforcement and remittance of general property taxes or assessments. In addition, if attorney's fees are incurred by the City to enforce this agreement, they shall be paid by the Developer.

6. Utility and Drainage Easements. All utility and drainage easements shall be accessible to the City at all times. In the event any unauthorized structure is constructed which obstructs partially or wholly City access to said easements, the City may request access from the Developer or owner of the underlying fee land. If such access is refused, City retains the right to remove such obstruction at the sole expense of the Developer or owner of the underlying fee land, except that once City has accepted maintenance of the streets and utilities, the cost of removing and replacing all authorized improvements (such as asphalt paving) shall be at the City's expense.

7. Right to Development/Vested Property Rights.

(a) Developer shall have the right to undertake and complete development of Park East and the facilities described in the Final Plat to be located thereon, and to use, occupy, sell, encumber or lease Park East and its facilities subject to the terms and conditions of the Final Plat and this Agreement. Such rights shall vest in the owner of Park East, and its successors and assigns, as beneficiaries and shall run with title to the land. The Final Plat and all other aspects of the development plan for Park East submitted by the Developer and finally approved by the City, constitute a "Site Specific Development Plan" pursuant to C.R.S. § 24-68-101, *et seq.*

(b) The development rights and uses described in this Agreement and included in the Detailed /Final Approval are vested for a period of three (3) years from the date of the Final Approval which, for the purposes of this provision, is June 17, 1999. With the exception of ordinances pertaining to lighting, during the 3-year vesting period, Developer and/or its successors or assigns shall not be subject to any addition, modification or amendment to the Glenwood Springs Land Use Code or to any other regulation not in effect on the date of vesting which imposes restrictions or limitations on the use of land which are inconsistent with the Final Approval. Developer and/or its successors or assigns shall be subject to regulations and laws of general applicability during the three (3) year vested rights period.

(c) Notwithstanding any other provision of this Agreement, no provision hereof shall be construed to exempt Developer or any future owner or owners of Park East from the requirements of Final Plat approval, building permits, or other necessary permits or approvals which become applicable subsequent to the approval of this Development Agreement. Nor shall any provision hereof be construed to preclude the application of the Uniform Building Code, Fire Code, Plumbing Code, Electrical Code, Mechanical Code, or other requirements reasonably necessary for the protection of the public health, safety and welfare.

8. Default. If Developer shall default in the performance of Developer's obligations, Developer shall have the right to cure said default after written notice by the City of the default to Developer. If Developer fails to cure such default within sixty (60) days after written notice is given from the City to Developer specifying the nature of such default (or if such default cannot be cured within the aforesaid period of time, if the Developer shall fail to promptly commence to cure the same and to thereafter diligently proceed with such cure), then the City shall be entitled to (1) undertake such work as may be necessary and appropriate to cure such default; and (2) draw against the letter of credit described in Section 5, above, and use the proceeds thereof as the City deems appropriate in its sole discretion, provided the proceeds are utilized for the improvements required by this Agreement. Any written notice required to be given to Developer shall be given by first class mail, postage prepaid, and by certified mail, return receipt requested, to the following address: c/o Freilich, Myler, Leitner & Carlisle, 106 S. Mill Street, Suite 202, Aspen, Colorado 81611. Developer shall notify the City in writing of any change in address to which this notice shall be given.

9. Extinguishment of Easements. Any and all easements of any nature not represented on the Final Plat for the Park East Subdivision which exist or may exist within Park East which provide rights to the City are hereby abandoned and extinguished.

10. Limitation of Liability. No recourse shall be had for any obligation of or default by Developer under this Agreement or for any claim with respect to this Agreement against any partner, joint venturer, officer, agent, legal representative or trustee of Developer or any creditor or lender of Developer under any rule of law (including, without limitation, the rule of law that general partners and joint venturers are jointly and severally liable for the indebtedness of a partnership or joint venture, as applicable), contractual provision, statute or constitution or otherwise, it being understood that all such liabilities of the partners, joint venturers, officers,

agents, legal representatives and trustees of Developer are to be, by the execution of this Agreement by the City, expressly waived and released as a condition of, and in consideration for, the execution and delivery of this Agreement. Nothing contained herein shall constitute a waiver of any obligation of Developer to the City under this Agreement or shall be taken to prevent recourse to or of the enforcement of any rights of the City as against the assets of Developer only or the letter of credit explicitly provided for in this Agreement.

11. Amendment. This Agreement, including its Exhibits "A", "B", "C", and "D" may be amended only by written instrument signed by the City and the Developer.

12. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

13. Assignment. In the event Developer does not market the individual Lots or develop the real property referred to herein, Developer may assign its interest in the property to a third party who shall develop the property, or portions thereof including the construction of the improvements contemplated hereunder, in accordance with and subject to the provisions of this Agreement.

14. Execution of Final Plat. Developer's obligations to construct the Improvements contemplated hereunder are expressly contingent on the City approving and executing the Final Plat of Park East Subdivision and the recordation of the same in the office of the Clerk and Recorder for Garfield County, Colorado.

15. Covenants Running with Land. All covenants, restrictions, conditions and obligations herein contained are covenants running with the land and shall attach and bind and inure to the benefit of the Developer and City, their respective grantees, successors and assigns.

16. Captions. Titles or captions of Paragraphs contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define or limit, extend or describe the scope of this Agreement or to the intent of any provisions hereof.

17. Entire Agreement. This Agreement constitutes the full and complete Agreement of the parties hereto and shall not be modified except by a written agreement signed by the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed the date and year first written above.

Table of Exhibits

Exhibit "A" Legal Description of Park East
Exhibit "B" Conditions of Approval
Exhibit "C" Cost Estimate for Public Improvements within Park East
Exhibit "D" Offsite Improvements and Trails Costs
Exhibit "E" Cost Sharing Agreement
Exhibit "F" Agreement Regarding Raw Water Irrigation System *gls*

CITY COUNCIL OF
GLENWOOD SPRINGS, COLORADO

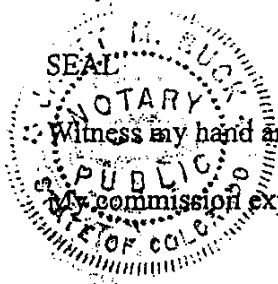
PARK EAST DEVELOPMENT
COMPANY, LLC,
a Colorado limited liability company

BY:
Name: *[Signature]*
Title: Mayor

BY:
Name: *[Signature]*
Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The above and foregoing Subdivision Improvements Agreement was acknowledged before me this 7th day of September 1999, by Sam Skradstad, as Mayor of the City Council of Glenwood Springs, Colorado.



Witness my hand and official seal.

[Signature]
Notary Public

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8 of 17 R 85.00 D 0.00 GARFIELD COUNTY CO

STATE OF COLORADO

COUNTY OF *Eagle*

)
) ss.
)

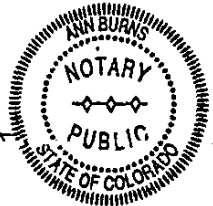
The above and foregoing Subdivision Improvements Agreement as acknowledged before me this 1st day of September, 1999, by James A. Horn as Manager of Park East Development Company, LLC, a Colorado limited liability company.

SEAL

Witness my hand and official seal.

My commission expires: 01-30-03

Ann Burns
Notary Public



MY COMMISSION EXPIRES:
January 30, 2003

EXHIBIT "A"

LEGAL DESCRIPTION OF PARK EAST SUBDIVISION

PARCEL 2, SECOND AMENDED PLAT OF GLENWOOD LIMITED SUBDIVISION RECORDED THE 4th DAY OF JUNE 1999 AS RECEPTION No. 546750 OF THE GARFIELD COUNTY RECORDS:

A TRACT OF LAND SITUATE IN SECTIONS 22 AND 27, TOWNSHIP 6 SOUTH, RANGE 89 WEST OF THE SIXTH PRINCIPAL MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH BOUNDARY OF GLENWOOD PARK SUBDIVISION, CITY OF GLENWOOD SPRINGS, COUNTY OF GARFIELD, STATE OF COLORADO WHENCE THE WITNESS CORNER TO THE NORTH $\frac{1}{4}$ CORNER OF SAID SECTION 27 BEARS S 00°09'09" W 356.71 FEET; THENCE N 47°33'15" E 581.13 FEET ALONG SAID SOUTH BOUNDARY TO THE WEST BOUNDARY OF PARK EAST MINOR SUBDIVISION, CITY OF GLENWOOD SPRINGS, COUNTY OF GARFIELD, STATE OF COLORADO; THENCE ALONG THE WEST BOUNDARY OF PARK EAST MINOR SUBDIVISION THE FOLLOWING COURSES: S 42°27'50" E 422.93 FEET; THENCE S 36°15'48" E 615.57 FEET; THENCE S 38°37'12" E 568.26 FEET; THENCE S 0°36'05" W 354.65 FEET; THENCE N 89°09'21" E 120.00 FEET; THENCE LEAVING SAID WEST BOUNDARY ON A COURSE BEARING S 0°50'39" E 509.41 FEET ALONG THE EAST LINE OF THE NW $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF SAID SECTION 27; THENCE N 89°04'54" W 269.68 FEET ALONG THE SOUTH LINE OF SAID NW $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ TO THE EAST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 258 AT PAGE 212 OF THE RECORDS OF THE CLERK AND RECORDER OF GARFIELD COUNTY, COLORADO; THENCE N 27°03'00" W 255.41 FEET ALONG SAID EAST LINE TO THE EAST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 347 AT PAGE 98; THENCE N 26°57'00" W 1624.90 FEET ALONG SAID EAST LINE; THENCE S 63°46'00" W 368.17 FEET ALONG THE NORTH LINE OF SAID TRACT OF LAND DESCRIBED IN BOOK 347 AT PAGE 98; THENCE N 27°00'56" W 229.93 FEET TO THE POINT OF BEGINNING.

PARK EAST MINOR SUBDIVISION ACCORDING TO THE FINAL PLAT RECORDED THE 5th DAY OF NOVEMBER 1990 AS RECEPTION No. 418555 OF THE GARFIELD COUNTY RECORDS

A PARCEL OF LAND SITUATED IN THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 22, AND THE NW $\frac{1}{4}$ NE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 27, TOWNSHIP 6 SOUTH, RANGE 89 WEST OF THE 6TH P.M., GLENWOOD SPRINGS, COLORADO: BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHENCE THE WITNESS CORNER FOR THE NORTH QUARTER CORNER OF SAID SECTION 27, A BRASS CAP IN PLACE BEARS S 29°47'54" W 863.13 FEET, THE TRUE POINT OF BEGINNING (SAID POINT BEING ON THE SOUTHEASTERLY LINE OF GLENWOOD PARK SUBDIVISION); THENCE N 47°33'00" E 342.35 FEET ALONG SAID SOUTHEASTERLY LINE TO A POINT ON THE CENTERLINE OF THE ROARING FORK RIVER; THENCE CONTINUING ALONG SAID CENTERLINE THE FOLLOWING TWELVE (12) COURSES:

1. S 52°27'00" E 250.00 FEET;
2. S 26°49'50" E 263.61 FEET;
3. S 46°50'33" E 242.90 FEET;
4. S 26°33'00" E 270.36 FEET;
5. S 36°30'37" E 407.26 FEET TO A POINT ON THE EASTERLY LINE OF SAID NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 27;
6. S 58°41'45" E 92.61 FEET;
7. S 48°04'39" E 131.71 FEET;
8. S 20°24'01" E 129.10 FEET;
9. S 01°38'12" E 140.06 FEET;
10. S 05°27'50" W 115.53 FEET;
11. S 02°09'11" E 133.09 FEET;
12. S 13°08'22" E 66.53 FEET;

THENCE LEAVING SAID CENTERLINE S 89°09'06" W 224.71 FEET TO A POINT ON SAID EASTERLY LINE OF SAID NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 27; THENCE S 89°09'06" W 120.00 FEET; THENCE N 00°35'50" E 354.65 FEET; THENCE N 38°37'27" W 568.26 FEET; THENCE N 36°16'03" W 615.57 FEET; THENCE N 42°28'05" W 422.93 FEET TO THE TRUE POINT OF BEGINNING.

CITY OF GLENWOOD SPRINGS
COUNTY OF GARFIELD
STATE OF COLORADO

EXHIBIT "B"
CONDITIONS OF APPROVAL

The following are the conditions of approval required by the City of Glenwood Springs for the Park East Subdivision, excluding those Offsite Improvements listed in Exhibit "D":

1. Developer shall bear all costs for the project, including excavating, conduit, splice vaults, transformer pads, switchgear pads, transformers, switchgear, underground primary cable, underground triplex (secondary) cable, secondary pedestals, gravel, labor and all other materials. The estimate shall be paid in full before any materials are order or any work begins. The estimate shall be valid for only 30 days.
2. To maintain the 4-foot depth of the primary cable, streets within Park East shall be at final grade prior to the time the City's Electric Department installs any conduit or splice vaults in the roadway in order.
3. Developer shall install all street lighting in Park East using lighting fixtures which meet the City's standard for lighting unless otherwise approved by the Public Works Director.
4. Developer shall be responsible for the installation of the signage in all parking areas identified on the Final Plat prior to issuance of a building permit for any Lot within the subdivision. On street parking shall be prohibited except in parallel parking bays located in the subdivision.
5. Developer shall provide written reassurance that the road providing access to the property east of Park East may be relocated to the corridor between Lots 5 and 6, whether an access agreement exists and whether the re-alignment requires the approval of the adjacent property owners. Developer shall also provide plans, which demonstrate that the property can be adequately served by the new access.
6. The height of the street light at the intersection of Red Cliff Drive and Mount Sopris Drive shall meet FAR Part 77 regulations.
7. Prior to issuance of a building permit for any Lot within the subdivision, Developer shall construct the cross-walks on Mount Sopris Drive, as shown on the revised plan submitted to the City on June 14, 1999. Prior to construction, Developer shall coordinate improvements with the RE-1 School District and the elementary school. The improvements shall include bulb-outs, textured cross-walks or wide, low speed bumps.
8. Developer shall be responsible for ensuring that construction traffic accesses the subdivision from the south, and shall install any signage required by the City Engineer to direct traffic.
9. Prior to issuance of a building permit for any Lot within the subdivision, Developer shall construct a 10 foot wide soft trail which complies with the City's Rivertrail Design

Guidelines and Standards within the 20 foot wide easement proposed along the top of the riverbank.

10. Developer shall be responsible for constructing an eight-foot-wide soft trail, which complies with the City's Rivertrail Design Guidelines and Standards in the 15 foot corridor located between the airport and the subdivision.
11. Final park design shall include a turf area, which can be utilized for passive activities.
12. The water and raw water system shall reflect comments made by the City's Water / Wastewater Department in correspondence dated April 20, 1999.
13. Developer must submit utility "as-builts" before any building permit for any Lot within the subdivision shall be issued.
14. A fire hydrant shall be installed at the corner of Red Cliff Drive and Mount Sopris Drive, and the fire hydrant located in front of Lot 43 must be relocated to the corner of Red Cliff Drive and Ouray Road, in a final location subject to the approval of the Department of Emergency Services prior to issuance of a building permit for any Lot within the subdivision.
15. Each single family residence constructed on any Lot shall include a minimum of three parking spaces.
16. Each owner of a lot shall maintain, and if necessary, install, landscaping in the area between any road within or adjacent to Park East Subdivision and the edge of the owner's lot. All such landscaping shall conform with the requirements of the City, if applicable.
17. The first owner of a lot located adjacent to the Glenwood Springs Airport, which lot is encumbered by a Landscape Easement, as identified on the Final Plat, shall not later than the end of the growing season (May through October) following the issuance of a certificate of occupancy for the improvements on the lot, plant at least two trees within the Landscape easement next to the Airport. Deciduous trees will have a trunk measuring at least 1 ½ inches as measured by a caliper at a height of three feet from the ground. At least one such tree will be an evergreen at least six feet in height. The owner shall be responsible for keeping the trees alive, or replacing them if the Owner is unsuccessful.
18. Owners of Lots encumbered by a landscape buffer, as identified on the Final Plat, shall maintain the landscape buffer located within the Lot as required by the Approval from the City. The Home Owners' Association shall maintain landscaping found (1) within the cul-de-sac located off Mountain Drive, (2) within the round-about located at the south entrance to Park East, and (3) the island at the north entrance to Park East.

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19. On Lots 39 – 40 and on Lot 42, within (10) feet of the rear lot line adjacent to the Neighborhood Park, fences will be limited to rail fences with these additional limitations:
 - No more than four rails will be allowed,
 - Rails will not be greater than 6" in width,
 - The gaps in between the rails can be covered with a transparent wire mesh to contain pets.
20. The Park East Subdivision Homeowners Association shall be responsible for expenses incurred in the operation, maintenance or replacement of the pump station and force sewer main serving Lots 2, 28 through 37, 42 through 44, and 70 through 79.

EXHIBIT "C"
COST ESTIMATE FOR PUBLIC IMPROVEMENTS WITHIN PARK EAST

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST

PARK EAST

SE JOB NO. 98082.01

8/24/99

PAGE 1 OF 1

ITEM	QUANTITY	UNIT	UNIT COST	COST
EXCAVATION	LUMP SUM	L.S.	80,000.00	80,000.00
MOBILIZATION	LUMP SUM	L.S.	20,000.00	20,000.00
CLEAR AND GRUB	LUMP SUM	L.S.	18,000.00	18,000.00
SAWCUT AND REMOVE ASPHALT	571	S.Y.	2.00	1,142.00
SAWCUT AND REMOVE CONCRETE CURB	216	L.F.	4.00	864.00
SAWCUT AND REMOVE CONCRETE S/W	1,312	S.F.	1.00	1,312.00
CLASS 6 ABC	1,750	C.Y.	24.00	42,000.00
2" ASPHALT 1st Lift	10,500	S.Y.	5.00	52,500.00
2" ASPHALT Top Lift	10,500	S.Y.	5.00	52,500.00
2 1/2" ASPHALT DRIVEWAY	430	S.Y.	8.00	3,440.00
CONCRETE CURB & GUTTER	7,270	L.F.	12.00	87,240.00
CURB INLET	23	EA.	1,500.00	34,500.00
DRYWELL	20	EA.	2,200.00	44,000.00
15" ADS N-12	890	L.F.	24.00	21,360.00
CONCRETE SIDEWALK	36,725	S.F.	3.00	110,175.00
6' WIDE GRAVEL TRAIL	1,845	L.F.	6.00	11,070.00
INFILTRATOR CHAMBERS	266	EA.	180.00	47,880.00
CLASS I STREET SIGN	9	EA.	275.00	2,475.00
STREET LIGHT	5	EA.	500.00	2,500.00
HAND-I-CAP RAMP	15	EA.	150.00	2,250.00
4' DIAMETER STORM MANHOLE	2	EA.	2,000.00	4,000.00
CONCRETE SIDEWALKS AT SCHOOL	3	EA.	3,500.00	10,500.00
SEWER INTERCONNECTION	1	EA.	1,500.00	1,500.00
4' DIA MANHOLE	22	EA.	2,100.00	46,200.00
10" SEWER MAIN	2,505	EA.	27.00	67,635.00
8" SEWER MAIN	1,682	L.F.	25.00	42,050.00
4" SEWER SERVICES	83	EA.	1,000.00	83,000.00
FORCE MAIN	261	L.F.	25.00	6,525.00
SANITARY SEWER LIFT STATION	1	EA.	30,000.00	30,000.00
WATER INTERCONNECTION	2	EA.	1,500.00	3,000.00
8" DIP WATER MAIN	4,571	L.F.	28.00	127,988.00
FIRE HYDRANTS	9	EA.	2,100.00	18,900.00
8" VALVES	20	EA.	780.00	15,600.00
3/4" WATER SERVICE	83	EA.	1,000.00	83,000.00
TRAFFIC CONTROL		L.S.	2,500.00	2,500.00
DECORATIVE CONCRETE	12,400	S.F.	5.50	68,200.00
CUL DE SAC APRON	276	L.F.	30.00	8,280.00
CROSS PAN	990	S.F.	5.50	5,445.00
TOTAL				1,259,531.00

This opinion of probable cost was prepared for budgeting purposes only. Sopris Engineering, LLC cannot be held responsible for variances from this estimate as actual costs may vary due to bid and market fluctuations.

COST ESTIMATE.xls

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EXHIBIT "D"
OFFSITE IMPROVEMENTS AND TRAILS COSTS

The following are the Offsite Improvements required by the City of Glenwood Springs for the Park East Subdivision:

1. Developer shall pre-pay all or a portion of the wastewater system improvement fees necessary for the City to complete its plan for upgrading the interceptor sewer system as set forth in Exhibit E. The amount of the surety is \$107,870.
2. Developer shall commit \$83,000 for the improvements of Airport Road, payable at the rate of \$1,000 per lot and due at the time of each closing of a Lot, or, at such time the City requests the balance of the funds because it will soon commence construction of improvements to the road. The commitment to fund shall be bonded.
3. Developer shall commit \$83,000 to be used toward buying down affordable housing at a rate of \$1,000 per lot payable by Developer at the closing of each Lot.
4. Developer shall contribute \$6,250 towards the Coke Oven Historical Fund.
5. Developer shall enter into an agreement with the City and Studio 3 Land Company, LLC (the "Cardiff Glen Developer") for the construction of a 500,000 gallon water storage facility to be located on land owned by the Glenwood Land Company, with the facility to be made available to the City via easements as set forth in Exhibit F. The amount of the surety is \$148,005.
6. Developer shall contribute \$68,000 toward development of a raw water irrigation system benefiting the Park East Subdivision and nearby areas as set forth in Exhibit G.
7. Developer shall contribute \$27,687 to the City of Glenwood Springs to be used in the development of:
 - a City community trail within the 20' trail easement on the top of the riverbank (\$21,231), and
 - two access trails down the riverbank (\$6,456).

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8. Summary of Financial Commitments to Offsite Improvements.

Wastewater System Improvement Fees	107,870
Airport Road	83,000
Affordable Housing	83,000
Coke Oven Historical Fund	6,250
Water Tank	148,005
Raw Water Irrigation System	68,000
Trail Construction	<u>27,687</u>
Total Commitments	523,812
Less Amounts Paid Upon Recording of Plat	
Coke Oven Historical Fund	(6,250)
Raw Water Irrigation System	<u>(68,000)</u>
Amount Covered by Letter of Credit	<u><u>449,562</u></u>



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EXHIBIT "E"
COST SHARING AGREEMENT



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EXHIBIT "F"
AGREEMENT REGARDING RAW WATER IRRIGATION SYSTEM

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT for a perpetual conservation easement in gross is made this 30th day of August, 1999, by PARK EAST DEVELOPMENT COMPANY, LLC, a Colorado limited liability company having an address at P.O. Box 620, Basalt, Colorado 81621, its successors and assigns ("Grantor"), in favor of the ROARING FORK CONSERVANCY, a Colorado non-profit corporation qualified to do business in Colorado, having an address at P.O. Box 323, Basalt, Colorado 81621 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property located on the Roaring Fork River in the City of Glenwood Springs, Garfield County, Colorado, known as the Park East Subdivision (hereinafter "Subdivision"); and

WHEREAS, the Subdivision includes certain property located within the City of Glenwood Springs Hillside Preservation District (hereinafter the "Property"), which Property is more particularly described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Property possesses natural, ecological, riparian, wetlands habitat, wildlife habitat, scenic and other open space values, as defined in C.R.S. § 38-30.5-101 et seq., of great importance to Grantor, the Subdivision as a whole, the people of Glenwood Springs and Garfield County, and the people of the State of Colorado (collectively hereinafter referred to as "Conservation Values");

WHEREAS, the Roaring Fork River is an important part of the local ecosystem and as such provides important habitat for a wide variety of birds, fish, and both marine and terrestrial mammals and plants located on the Property, the preservation and protection of which is considered a prime Conservation Value by the parties; and

WHEREAS, there is a reasonable possibility that Grantee may acquire other valuable property rights in other nearby properties to expand the Conservation Values preserved by this Conservation Easement; and

WHEREAS, the biological integrity of the Property and other land in the vicinity has been modified by intense urbanization in the area, and the trend is expected to continue; and

WHEREAS, Grantor and Grantee desire to preserve and conserve the Conservation Values of the Property for the public benefit; and

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, dated July 19, 1999, on file at the offices of Grantor and Grantee (hereinafter "Baseline Documentation"), which Baseline Documentation consists of reports, maps, photographs, and other documentation that the parties have mutually agreed provide, collectively, an accurate representation of the Property at the time of this grant and which is intended



RETURN TO:
CHAFFIN/LIGHT ASSOCIATES, INC.
P.O. BOX 620
BASALT, CO 81621

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to serve as an objective information baseline for monitoring subsequent compliance with the terms of this grant; and

WHEREAS, accordingly, Grantor desires to convey to Grantee the right to preserve and protect the Property and the Conservation Values associated thereto in perpetuity, and to bind itself, as well as any and all future successors or assigns of Grantor, by the obligations set forth herein; and

WHEREAS, Grantee is a publicly supported, tax-exempt non-profit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is the preservation, protection, and enhancement of the natural riparian corridors of the Roaring Fork and Frying Pan Rivers and the unique scenic, natural and historic features thereof; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come; and

WHEREAS, the State of Colorado has recognized the importance of private efforts to preserve natural ecosystems of the State by enactment of C.R.S. § 38-30.5-101, et seq.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Grant of Easement.** Pursuant to the laws of Colorado and in particular, C.R.S. § 38-30.5-101, et seq., Grantor hereby voluntarily grants, assigns, sells and conveys to the Grantee and its successors and assigns in perpetuity a conservation easement in gross (hereinafter "Easement"), of the nature and to the extent hereinafter set forth, on, over, across and in respect to the Property, which Easement is more specifically illustrated on the Subdivision Final Plat Map, a copy of which is attached hereto as Exhibit B and incorporated herein by reference.

2. **Purpose.** The purpose of this grant is to assure that the Conservation Values of the Property, subject to the existing uses of the Property described herein, are retained forever and to prevent any use of the Property that will significantly impair or interfere with such Conservation Values. Grantor intends that the Easement will confine the use of the Property to activities that are consistent with the purposes set forth herein, and pursuant to the terms of C.R.S. § 38-30.5-101, et seq., the Property preserved hereby as natural land may not be converted or directed to any uses other than those provided herein.

3. **Rights of Grantee.** To accomplish the purposes set forth herein for the Easement, the following rights are hereby conveyed to Grantee by Grantor, with such rights to be exercised subject to Grantee's reasonable judgment:

- (a) To identify, preserve and protect in perpetuity the Conservation Values of the Property, and in the event of their degradation or destruction, to restore the significant ecological features and values of the Property;
- (b) To enter upon the Property at reasonable times in order to monitor Grantor's and the public's compliance with this Easement and otherwise enforce the terms of this grant of Easement;
- (c) To enhance the Conservation Values along the Roaring Fork River by conducting grading, planting, irrigation, and other activities as may be necessary to restore and enhance the edge of the river and the surrounding habitat located on the Property at the discretion of Grantee;
- (d) To enter the Property for educational and scientific purposes, and for any other purpose deemed necessary by the Grantee;
- (e) To encourage the public's enjoyment of the Conservation Values associated with the Property;
- (f) To enforce against and prevent any activity on or use of the Property that is inconsistent with the purpose of this grant of Easement, including use of the Property by the public which is not specifically allowed or recognized herein, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use; and
- (g) To place signs or other informational postings on the Property which identify the land as being protected by the conservation easement granted herein;
- (h) To require restoration of the areas or features of the Property which are damaged by activity inconsistent with this Conservation Easement;
- (g) To immediately enter upon the Property without notice if such entry is necessary to prevent damage to or the destruction or degradation of the Conservation Values identified in this Easement; and
- (h) To perform such activities on the Property as the Grantee deems reasonably necessary in order to carry out any and all rights granted by this Easement.

4. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this grant of Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, unless specifically allowed elsewhere in this Agreement;

- (a) Subdivision of any nature;
- (b) Any residential, commercial or industrial development or use;
- (c) Any recreational activities incompatible with the purpose of the Easement, at the discretion of Grantee;
- (d) Any vehicular (car, truck, motorcycle, snowmobile, etc.) use, except as may be necessary to preserve, enhance or protect the Easement at the discretion of Grantee;
- (e) Parking, storage, or dumping of any kind;
- (f) Coverage of land by asphalt, concrete, or other material that does not constitute a natural cover for the land, except in connection with those trails and buildings specifically allowed hereunder;

- (g) Location of any buildings, structures, roads, trails or other improvements, except as otherwise specifically allowed hereunder or at the discretion of Grantee;
- (h) Alteration of the land surface through grading, soil dumping or trenching, except as may be necessary for activities related to the purpose of this grant of Easement such as irrigation improvements, utility repair subject to remediation, habitat restoration/preservation, approved trail and structure construction, etc.;
- (j) Exploration or mining for any mineral, coal or other hydrocarbons, or other materials or substances, or excavation or quarrying for gravel, soil, rock, sand or similar materials;
- (k) Placement of any advertising signs or billboards;
- (l) Cutting or removal of trees, shrubs, or other vegetation, except as necessary for fire protection, elimination of diseased growth, and similar protective measures related to habitat preservation/enhancement at the discretion of Grantee;
- (m) Introduction of nonnative plants and animal species within riparian area that may compete with and result in the decline or elimination of natural species. Any new plantings shall be confined to native plants characteristic of the riparian region;
- (n) No livestock shall be brought upon the Property, and the parties shall cooperate to remove any livestock which enters onto the Easement;
- (o) Any use that would cause, increase or substantially add to the risk of soil erosion;
- (p) Use of any chemical agents such as weed control agents or other herbicides or pesticides not approved by state law or otherwise approved by Grantee;
- (q) Public use of and access upon the Property, except as otherwise authorized herein or upon the discretion of Grantee; and
- (r) Dumping or other disposal of toxic and/or hazardous materials or of other forms of refuse or trash.

5. Reserved Rights. Grantor reserves unto itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this grant of Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- (a) The right to restore damage to the Property or Easement that may be caused by fire, flood, storm, earth movements, or acts beyond the Grantor's control;
- (b) The right to maintain, or direct or allow applicable governmental entities to maintain, all existing public trails and structures, if any, lawfully erected and maintained upon the Property as set forth herein;
- (c) All water rights within the Easement. Water rights reserved include but are not limited to riparian, groundwater, and appropriated water rights;
- (d) The right to mutually, with Grantee, enforce against and prevent any prohibited action set forth herein on the Property by any entity and to erect appropriate signage and fencing indicating the presence of the Easement and the boundaries thereof; and

(e) Rights of access on, over and upon the Property in a manner consistent with the maintenance and preservation of the Easement and the Conservation Values set forth therein.

5.1 Park East Subdivision Documents. Grantor agrees to incorporate within any and all Subdivision homeowner covenants, rules and regulations, provisions which inform all Subdivision property owners of, and bind all such owners by, this Easement and which restrict all Subdivision property owners' access upon the Property and establish a mechanism by which any future Subdivision homeowner's association may lien any homeowner for violating the terms of the Easement. Such Subdivision covenants and/or rules shall also mandate that no amendment of any provision contained therein addressing this Easement may be amended without the prior written approval of Grantee. Any deed executed by Grantor in connection with the sale of Subdivision lots shall specifically make such conveyances subject to this Easement and bind such lot owners by any and all terms and provisions set forth herein.

5.2 City of Glenwood Springs Trail and Park. Grantee acknowledges that Grantor shall dedicate to the City of Glenwood Springs, Colorado on the Subdivision Final Plat a trail easement which shall be made part of the City of Glenwood Springs Master Trail Plan, which trail easement shall be adjacent to, and constitutes the westerly boundary of, the Property, as illustrated and labeled on Exhibit B attached hereto. Grantee further acknowledges that Grantor shall dedicate a park area to the City, which park area shall also be located on the westerly boundary of the Property. While Grantee acknowledges that there will be heavy public use of said trail easement and park by members of the public, Grantee does not waive any right of enforcement against any member of the public who enters upon the Property from such trail easement or park or otherwise interferes with or impinges upon any Conservation Value set forth herein. Grantee, at its discretion, may post signage along said City trail informing the public of the existence of the Easement and that access onto the Property is prohibited.

5.3 Fisherman's Easement. Grantee acknowledges that a fisherman's easement shall exist upon the Property, which easement is located approximately ten feet (10') above the Roaring Fork River high water line, as illustrated and labeled on Exhibit B attached hereto. Such fisherman's easement shall be dedicated by Grantor to the City of Glenwood Springs on the Final Plat. Grantee acknowledges the public's right to utilize said fisherman's easement but does not waive any right of enforcement against any member of the public utilizing the easement who enters upon the Property from such easement or otherwise interferes with or impinges upon any Conservation Value set forth herein. Grantee, at its sole discretion, may post said fisherman's easement with signage informing the public of the existence of the

Easement and that access onto the Property from the fisherman's easement is prohibited.

5.4 Existing Trails. Grantee acknowledges that two (2) existing trail easements shall exist upon the Property, which trails connect to the City of Glenwood Springs trail located on the westerly boundary of the Property and pass easterly through the Property to the Roaring Fork River. Said trails are commonly known as the "Wagon Trail" and the "Naturalist Trail" and are illustrated and labeled on that map attached hereto as Exhibit B. The parties acknowledge that these two trail easements shall be dedicated by Grantor to the City of Glenwood Springs on the Subdivision Final Plat and similar to the fisherman's easement described in Paragraph 5.3 above, shall not be included as part of the Property. Grantee acknowledges the public's right to utilize these easements upon the Property but does not waive any right of enforcement against any member of the public utilizing said easements who enters upon the Property from such easements or otherwise interferes with or impinges upon any Conservation Value set forth herein. Grantee, at its sole discretion, may post these trails with signage informing the public of the existence of the Easement and that access to the Property is prohibited. The City of Glenwood Springs shall be responsible for maintaining and repairing said existing trails and easements, including the fisherman's easement, as necessary.

5.5 Building Site. Grantor hereby grants to Grantee the right to construct a shelter/building for educational and other purposes at any time in the future upon that portion of Tract 4 located easterly of that City of Glenwood Springs trail described in Paragraph 5.2 above and adjacent to the Property, at the discretion of Grantee. "Tract 4" is illustrated on the Subdivision Plat and Exhibit B attached hereto. As Grantor is dedicating Tract 4 to the City of Glenwood Springs at the time of Final Plat for park purposes, Grantee's right to construct said shelter/building upon Tract 4 shall be subject to any and all pertinent City of Glenwood Springs rules and regulations, including but not limited to any special use permit issuance requirement which may be a condition precedent to building any structure. Grantor shall provide necessary conduit to the site for the extension of future utilities to the site in connection with its development of the Subdivision, which conduit Grantee may choose to utilize in connection with any future building infrastructure. In the event Grantee shall ever construct a shelter/building on the dedicated site, the parties acknowledge that Grantee shall be solely responsible for maintaining, monitoring, and insuring such building at Grantee's sole discretion.

5.6 Pump Station. Grantee acknowledges the contemplated construction by the City of Glenwood Springs or its assignee of a raw water irrigation pump station adjacent to the southerly boundary of the Property. The parties acknowledge that the pump station and its building pad/site shall be dedicated by Grantor to the City of

Glenwood Springs and shall not be included within the Property. Similarly, Grantor shall dedicate to the City a related utility easement for the pipeline and other underground infrastructure serving the pump station, which easement and infrastructure shall be located within the existing "Naturalist Trail" easement as shown on Exhibit B attached hereto and therefore shall also not be deemed to be located upon the Property. All operation, maintenance, repair or replacement of such pump house, pipeline, and related infrastructure shall be the sole responsibility of the City of Glenwood Springs. Grantor shall be responsible for limiting the City of Glenwood Springs access to and from the pump station and related facilities to on, over and across those trails and easements referenced in Paragraph 5.4 above. The City shall thereafter be subject to all terms and conditions of this Easement. Grantor shall be responsible for informing the City of this Easement and obligating the City to conduct any and all necessary repair, maintenance or replacement activities related to the pump house or related facilities. Grantor shall similarly be obligated to inform the City that should the City require entry upon or need to disturb any portion of the Property, the City is required to receive prior permission from Grantee prior to any such work and if such permission is granted, shall be obligated to fully repair, restore, and revegetate the Property to the condition existing prior to the time the work began.

6. Notice of Intent to Undertake Certain Permitted Actions. Grantor, its successors and assigns, shall provide reasonable notice to Grantee prior to undertaking any substantial permitted activities within the Easement in order to give Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Such notice requirement shall also be required of the City of Glenwood Springs in connection with any necessary maintenance, repair or replacement activity as contemplated in Section 5.6 above. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistence with the purpose of this Easement. This notice provision shall not apply in cases of emergency.

7. Grantee's Approval. Where notice is provided to Grantee by Grantor or other third party as required in Section 6 above or otherwise pursuant to this Easement, Grantee shall grant, deny, or withhold its approval subject to objections and/or conditions, which approval, denial or conditional approval shall not be unreasonably withheld and based on consistency with the purpose of this Easement.

8. Arbitration. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the

selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be. A judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator(s) and attorneys' fees, which shall be determined by the arbitrator(s) and any court of competent jurisdiction that may be called upon to enforce or review the award. Notwithstanding the foregoing, no award of costs and fees shall be entered against Grantee unless the arbitrator first determines that Grantee has acted in bad faith or that grounds for an award of costs and attorneys' fees exists pursuant to C.R.S. §13-17-101 et seq.

9. Grantee's Remedies. If Grantee determines that Grantor or any other party is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor or such other party of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor or other party fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30)-day period, fails to begin curing such violation within the thirty (30)-day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including damages for the loss of ecological, riparian, wildlife or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury.

Without limiting Grantors' or any other parties' liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph or Paragraph 8 without prior notice to Grantor or other party or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's

remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

9.1 Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor or any other party, including without limitation costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's or other third party's violation of the terms of this Easement, shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including without limitation attorneys' fees, shall be borne by Grantee, but such an award shall only be made if it is determined that Grantee's acts or omissions were the result of bad faith on the part of Grantee or arose from other circumstances that would justify an award of costs and attorneys' fees pursuant to C.R.S. §13-17-101 et seq.

9.2 Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor or other party shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor or other party shall impair such right or remedy or be construed as a waiver.

9.3 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

9.4 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation acts of third parties not agents or representatives of Grantor, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

9.5 Grantor's Absence. If Grantee determines that this Conservation Easement is, or is expected to be, violated, Grantee will make good-faith efforts to notify the Grantor. If, through reasonable efforts, Grantor cannot be notified, and if Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the Conservation Values, then Grantee may pursue its lawful remedies without prior notice to and without awaiting Grantor's opportunity to cure. Grantor agrees to reimburse all costs associated such actions.

9.6 Actual or Threatened Non-Compliance. Grantor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm and that Grantee is entitled to invoke the equitable jurisdiction of the court to enforce this Conservation Easement in such cases.

10. Access. Unless otherwise set forth herein, no right of access by the general public on, over, across or through the Property, including without limitation homeowners within the Subdivision, is conveyed by this Easement.

11. Costs and Liabilities. Grantor, its successors and assigns, shall retain all responsibility, if any, and shall bear all costs and liabilities of any kind, if any, incident to ownership of the Property, including but not limited to the owners of Lots 70 through 83 whom shall be deemed the owners of the underlying Property for liability purposes pursuant to and delineated by their respective lot lines as shown on the Subdivision Final Plat. The parties acknowledge that Grantor shall be solely responsible for the maintenance, repair and replacement of all trails and related easements existing upon the Property as set forth above and shall maintain liability insurance coverage related to such trails and easements. To the extent Grantor dedicates, conveys or otherwise transfers such trail easements to the City of Glenwood Springs as contemplated, Grantor shall be responsible for ensuring that the City assumes all such maintenance, repair, replacement and insurance obligations related thereto. Notwithstanding the foregoing obligations, neither Grantor nor the City of Glenwood Springs shall be obligated to maintain or restore the Property outside of the trail easement areas in the event of damage caused by fire, flood, or other natural causes or acts of God.

11.1 Taxes. Grantor, its successors and assigns, shall pay all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

11.2 Stewardship Fee. Grantor, its successors and assigns, including any future Subdivision homeowner's association, shall pay to Grantee an annual fee of \$12,450.00 for undertaking those tasks related to overseeing and protecting the Conservation Values set forth herein (hereinafter "Stewardship Fee"). It is contemplated that such fee shall be paid by any future homeowner's association through a line item assessment assessed to and collected from each and every Subdivision homeowner as a component of monthly association dues and Grantor shall include such payment obligation in any protective covenants and other rules and regulations of the Subdivision. The Stewardship Fee is broken down into the following components:

- a. **Monitoring Fee.** In exchange for Grantee monitoring the Property to ensure that the terms and conditions of this Grant of Easement are being met and complied with, Grantor shall pay to Grantee \$3,360.00 annually ("Monitoring Fee").
- b. **Educational Fee:** In exchange for Grantee conducting educational programs on the Property as part of its valley-wide riparian educational curriculum, Grantor shall pay to Grantee \$6,720.00 annually ("Educational Fee"). It is acknowledged by the parties that Grantee, at its sole discretion, may expend up to fifty percent (50%) of the annual Educational Fee for no more than four (4) years for the purpose of creating and erecting signage upon the Property along those public easements crossing through the Property as set forth in this Grant of Easement, including without limitation interpretive signage, as such signage is deemed by the parties to constitute an important educational purpose as contemplated under this Grant of Easement.
- c. **Maintenance Reserve:** A Maintenance Reserve shall be paid to Grantee in an annual amount of \$2,370.00. The Maintenance Reserve constitutes that portion of the Stewardship Fee reserved and for the purpose of funding hard costs related to the Property including, but not limited to, the following: replacement of vegetation in the event of flooding, addition of beneficial vegetation, repair of vandalized property, and other foreseeable or unforeseeable contingencies or events related to the Property. In the event the amount maintained in the Stewardship Fee account for Maintenance Reserve, plus applicable interest, meets or exceeds the total of five (5) yearly Maintenance Reserve payments ("5 Year Total"), the charges assessed by Grantee for Maintenance Reserve may be reduced or delayed at Grantee's discretion until such time as funds are drawn below the 5 Year Total. In addition to payment of the Maintenance Reserve fee, Grantor, its successors and assigns, shall coordinate and participate with Grantee in an annual neighborhood cleanup and/or restoration activity related to the Property.
- d. **Billing; Payment; Reports.** Grantee shall provide Grantor, its successors and assigns, with monthly Stewardship Fee invoices setting forth the pro rata Monitoring Fee, Educational Fee, and Maintenance Reserve charges for that month. Grantor shall pay Grantee all charges set forth within the monthly invoice within thirty (30) days of Grantor's receipt of the same. In the event Grantor, its

successors and assigns, fails to pay to Grantee any payments contemplated herein within the time period set forth, default interest shall begin to accrue against Grantor and in favor of Grantee at the rate of one and one-half percent (1 ½ %) per month. Grantee shall provide Grantor, its successors and assigns, including any eventual homeowners association, with semi-annual reports indicating the monitoring, educational, and other type of work conducted by Grantee upon the Property in connection with the Easement over the previous six month period. Grantee shall also include any and all Subdivision homeowners on its mailing list and send such homeowners copies of Grantee's newsletters on a regular basis, as well as other informational material at Grantee's discretion.

- e. Stewardship Fee Adjustment. In the sole discretion of Grantee, the charges assessed by Grantee as part of its Stewardship Fee may be adjusted annually pursuant to annual Consumer Price Index increases based upon the most recent Denver/Boulder All Items Index, published by the U.S. Department of Labor, Bureau of Labor Statistics. Furthermore, upon mutual agreement of the parties, their successors and assigns, such charges may be otherwise increased to comport with historical costs incurred, costs expected to be incurred, or actual costs incurred by Grantee in fulfillment of its duties hereunder.

11.3 Hold Harmless. Grantor, its successors and assigns, including without limitation purchasers of Subdivision Lots 70-83, shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, invitees and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the gross negligence of any of the Indemnified Parties; (2) the obligations specified in paragraphs 11, 11.1, and 11.2; and (3) the existence or administration of this Easement.

12. Extinguishment. If changed circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement may be terminated or extinguished, whether in whole or in part, by mutual agreement by the parties in writing or by judicial proceedings in a court of competent jurisdiction; provided, however, that such

extinguishment shall be subject to the provisions set forth in Paragraph 13, below. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, if any, shall be determined, unless otherwise provided by Colorado law at the time, in accordance with paragraph 12.1. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

12.1 Subsequent Sale, Exchange or Involuntary Conversion. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 12, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

12.2 Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

13. Change of Conditions. The fact that any use of the Property that is expressly prohibited by this Easement, or any other use determined to be inconsistent with the purpose of this Easement, may become more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely or partly to uses that are not permitted hereunder, has been considered by Grantor in granting this Easement. It is Grantor's belief that any such changes will increase the benefit to the public of the continuation of this Easement, and it is the intent of both Grantor and Grantee that any such changes should not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to Paragraph 12, above. In addition, the unprofitability to Grantor of allowing Grantee to carry on the permitted uses identified herein shall not impair the invalidity of this Easement or be considered grounds for its extinguishment pursuant to Paragraph 12, above. The parties acknowledge that should Grantee at any time in the future become unable to sufficiently provide monitoring and educational tasks as contemplated herein, due to financial reasons or otherwise, that such a changed condition shall be deemed to be a circumstance justifying the mutual termination or extinguishment, or assignment by Grantee, of this Easement.

14. Assignment by Grantee. This Easement is transferable by Grantee upon not less than forty-five (45) days prior written notice to Grantor; provided, however, Grantee may only assign its

rights and obligations under this Easement: (1) to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Colorado law and; (2) upon written consent of Grantor as to the assignment and assignee, which authorization and approval shall not be unreasonably withheld. As a condition of such transfer, Grantee shall require that the conservation purposes and Conservation Values of this grant continue to exist and be carried out; provided, however, that Grantor and any assignee of Grantee may delete, amend and/or modify the specific obligations of Grantee set forth herein (i.e., educational tasks), as well as Grantor's payment obligations related thereto, as mutually agreed upon by such parties and subject to the amendment provisions set forth in Paragraph 16 hereof.

15. Assignment or Subsequent Transfer by Grantor. It is contemplated by the parties that Grantor shall subsequently convey Subdivision lots underlying the Property to third parties and assign its rights and obligations as developer of the Subdivision, including its rights and obligations hereunder, to a Subdivision homeowners association. In the event Grantor by any deed, assignment or other legal instrument divests itself of or conveys any interest in all or a portion of the Property, including, without limitation, a leasehold interest, to a homeowners association or any other party, Grantor agrees to incorporate the terms of this Easement within such conveyance document and bind any assignee by the terms and conditions of this Easement. Grantor further agrees to provide reasonable written notice to Grantee of the transfer of any of Grantor's interest in the Property prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way. Subsequent successors or assigns of Grantor, including but not limited to a homeowner's association, shall be required to provide written acknowledgment to Grantee of its intent to be bound and abide by all terms and provisions of this Easement and perform all duties and obligations of Grantor as identified herein.

16. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the parties may jointly amend the Easement in writing pursuant to C.R.S. §38-30.5-107; provided, however, that no amendment shall be allowed that affects the qualification of the Easement under the IRS Code or C.R.S. § 38-30.5-101 et seq., any such amendment shall be consistent with the purposes of the Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be undertaken on the Property other than development or improvement permitted or contemplated under the Easement, and shall not impair any of the Conservation Values of the Easement. Any such amendment shall be recorded in the official records of Garfield County, Colorado.

17. Interpretation. The provisions of this Easement shall be liberally construed to effectuate their purpose of preserving and protecting the Property's wildlife habitat, unique native animals, and related riparian community. No remedy or election given by any provision herein shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have reviewed

and revised this Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. In the event of any conflict between the provisions of this Easement and the provisions of any use and zoning restrictions or directives of the State of Colorado, Garfield County, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.

18. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation contained within this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

19. **Notice of Agreement.** Grantor shall inform and provide notice to all prospective lessees, purchasers and lenders of the Property of the terms and provisions of this Agreement, including requesting subordination by any and all lenders in that form attached hereto as Exhibit C and incorporated herein by reference or similar subordination form.

20. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Park East Development Company, LLC
c/o CLH Properties, LLC, Manager
P.O. Box 620
Basalt, Colorado 81621
Phone: (970) 927-0847

To Grantee: Roaring Fork Conservancy
P.O. Box 323
Basalt, Colorado 81621
Phone: (970) 927-1290

21. **Recordation.** Grantee shall record this instrument in timely fashion in the official records of Garfield County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement.

22. **General Provisions.**

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

(b) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(c) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(d) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(e) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running perpetually with the Property.

(f) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(g) Authority; Title. Each person executing this Agreement represents and warrants that he or she has been duly authorized by one of the parties to execute this Agreement and has authority to bind said party to the terms and conditions hereof. Grantor further acknowledges that it holds good title to the Property free and clear and has the authority to grant the Easement herein described, which Easement shall be conveyed only subject to existing encumbrances either referenced herein or of public record.

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

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IN WITNESS WHEREOF Grantor and Grantee have executed this grant of Easement on the day and year first written above.

GRANTOR:

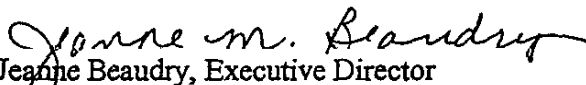
PARK EAST DEVELOPMENT COMPANY, LLC, a Colorado limited liability company

By: CLH PROPERTIES, LLC, a Colorado limited liability company, its Manager

By: 
James A. Horn, Manager

GRANTEE:

ROARING FORK CONSERVANCY, a Colorado non-profit corporation

By: 
Jeanne Beaudry, Executive Director



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EXHIBIT A
TO GRANT OF CONSERVATION EASEMENT

PROPERTY DESCRIPTION

That portion of Lots 70 through 83 lying easterly of the east line of the 20' Trail Easement, excepting that portion designated as Public Trail Easement, Utility, Irrigation & Public Trail Easement and Fishermen's Easement as shown on the Final Plat of Park East Subdivision recorded September __, 1999 at Book __, Page __, as Reception No. _____.