EL PASO COUNTY

COMMISSIONERS:
DENNIS HISEY (CHAIR)
AMY LATHEN (VICE CHAIR)

SALLIE CLARK
WAYNE WILLIAMS
JIM BENSBERG

AGENDA ITEM SUMMARY

Agenda Item No: 12.

Date: May 27, 2010

To: Board of County Commissioners

From: Tony Deconinck - Project Manager II, Development Services Division

Subject: GLENEAGLE DEVELOPMENT AGREEMENT - Request by Thomas & Thomas, Inc. (applicant) on behalf of MCTN LLC, (Owner) for approval of the Gleneagle Golf Course Development Agreement. A condition was added to each of the approvals for the Gleneagle PUD rezone (PUD-08-004) and the Gleneagle amended sketch plan (SKP-08-002), which proposed rezoning 10.5 acres of the 103.78-acre parcel to allow for 47 new patio homes. The property is located approximately three-quarters of a mile northeast of the intersection of Struthers Road and Gleneagle Drive, within the Tri-Lakes Comprehensive Plan area. (Tax Schedule No. 62062-01-096) (PUD-08-004).

SUMMARY (including information on budgeted matters):
GLENEAGLE DEVELOPMENT AGREEMENT - Request by Thomas & Thomas, Inc. (applicant) on behalf of MCTN LLC, (Owner) for approval of the Gleneagle Golf Course Development Agreement. A condition was added to each of the approvals for the Gleneagle PUD rezone (PUD-08-004) and the Gleneagle amended sketch plan (SKP-08-002), which proposed rezoning 10.5 acres of the 103.78-acre parcel to allow for 47 new patio homes. The property is located approximately three-quarters of a mile northeast of the intersection of Struthers Road and Gleneagle Drive, within the Tri-Lakes Comprehensive Plan area. (Tax Schedule No. 62062-01-096) (PUD-08-004).

BACKGROUND (including information on budgeted matters):
SUMMARY - The applicant requested a PUD rezone (PUD-08-004) and amended sketch plan (SKP-08-002) to rezone a 10.5-acre part of the larger 103.78-acre parcel for the purposes of constructing patio homes on what is currently the driving range of the Gleneagle Golf Course. The applications were heard together by the Board of County Commissioners on July 9, 2009. - At the hearing, a condition was added to each of the approvals, which read: - As a condition precedent to development of the 10.35 acre portion of the Gleneagle Golf Course, the applicant, including his/her heirs, personal representatives, successors and assigns, as owner of both this property and the balance of the Gleneagle Golf Course, shall no later than March 31, 2010 submit for Board of County Commissioner approval a Development Agreement that addresses issues to protect public health, safety and welfare, including, but not limited to, disposition and/or preservation of the balance of the Gleneagle Golf Course property, and such rezoning to PUD shall return automatically to RR-5 zoning by operation of law, but nothing shall preclude Applicant from applying to the Board of County Commissioners for consideration of up to a one year extension beyond

March 31, 2010. Any such extension shall be made by Applicant in time sufficient for a public hearing on or before March 31, 2010. Any notice of hearing for approval of the Development Agreement and/or extension beyond March 31, 2010 shall be the same as for rezoning application (mailing to adjacent property owners and posting) to the Board of County Commissioners, except that notice by publication shall not be required. - The applicant has since worked with neighbors, the Development Services Department, and the County Attorney's Office to craft the attached development agreement. The latest version of the revised Development Agreement has been modified to resolve all Development Services concerns.

FINANCIAL IMPLICATIONS (completed only if not currently budgeted, and is an emergency, mandated or grant/unanticipated revenue funding request before the Board for consideration):

Revenue/Funding Sources:	NA
Revenue/Funding Amount:	NA
Subject to TABOR?	NA
Increase to Original Adopted Budget:	NA
Net Cost to El Paso County:	NA
Total Project Cost:	NA

EL PASO COUNTY

COMMISSIONERS:
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AMY LATHEN (VICE CHAIR)

SALLIE CLARK
WAYNE WILLIAMS
JIM BENSBERG

DEVELOPMENT SERVICES DIVISION
MAX ROTHSCHILD P.E. INTERIM DIRECTOR

PUD-08-004
GLENEAGLE DEVELOPMENT AGREEMENT

Request by Thomas & Thomas, Inc. (applicant) on behalf of MCTN LLC, (Owner) for approval of the Gleneagle Golf Course Development Agreement. A condition was added to each of the approvals for the Gleneagle PUD rezone (PUD-08-004) and the Gleneagle amended sketch plan (SKP-08-002), which proposed rezoning 10.5 acres of the 103.78-acre parcel to allow for 47 new patio homes. The property is located approximately three-quarters of a mile northeast of the intersection of Struthers Road and Gleneagle Drive, within the Tri-Lakes Comprehensive Plan area. Tax Schedule No. 62062-01-096.

Authorization for Board of County Commissioners to Sign: Development Agreement

COMMISSIONER DISTRICT: 1

PREPARED BY: Tony Deconinck

BOARD DATE: May 27, 2010

PROPERTY LOCATION: Approximately three-quarters of a mile northeast of the intersection of Struthers Road and Gleneagle Drive

LEGAL DESCRIPTION:
Tract P of Donala Subdivision #2

ZONING: PUD (Planned Unit Development), previously RR-5 (Residential Rural)

SUMMARY
The applicant requested a PUD rezone (PUD-08-004) and amended sketch plan (SKP-08-002) to rezone a 10.5-acre part of the larger 103.78-acre parcel for the purposes of constructing patio homes on what is currently the driving range of the Gleneagle Golf Course. The applications were heard together by the Board of County Commissioners on July 9, 2009.

At the hearing, a condition was added to each of the approvals, which read:

> *As a condition precedent to development of the 10.35 acre portion of the Gleneagle Golf Course, the applicant, including his/her heirs, personal*

representatives, successors and assigns, as owner of both this property and the balance of the Gleneagle Golf Course, shall no later than March 31, 2010 submit for Board of County Commissioner approval a Development Agreement that addresses issues to protect public health, safety and welfare, including, but not limited to, disposition and/or preservation of the balance of the Gleneagle Golf Course property, and such rezoning to PUD shall return automatically to RR-5 zoning by operation of law, but nothing shall preclude Applicant from applying to the Board of County Commissioners for consideration of up to a one year extension beyond March 31, 2010. Any such extension shall be made by Applicant in time sufficient for a public hearing on or before March 31, 2010. Any notice of hearing for approval of the Development Agreement and/or extension beyond March 31, 2010 shall be the same as for rezoning application (mailing to adjacent property owners and posting) to the Board of County Commissioners, except that notice by publication shall not be required.

The applicant has since worked with neighbors, the Development Services Department, and the County Attorney's Office to craft the attached development agreement. The latest version of the revised Development Agreement has been modified to resolve all Development Services concerns.

DEVELOPMENT SERVICES DEPARTMENT RECOMMENDATION: The Development Services Department recommends approval of the development agreement.

ATTACHMENTS
Gleneagle Golf Course Development Agreement
Neighborhood concerns and input

DEVELOPMENT AGREEMENT
GLEN EAGLE GOLF COURSE

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of May, 2010, by El Paso County by and through the **BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO** ("County" or "Board"), whose address is 27 East Vermijo, Colorado Springs, CO 80903 and **MCTN, LLC** ("MCTN"), a Nevada limited liability company, whose address is c/o Miles D. Scully, Gordon & Rees LLP, 101 W. Broadway, Suite 2000, San Diego, CA 92101. The County and MCTN may be referred to individually as a "Party," and/or collectively as the "Parties."

RECITALS

WHEREAS, MCTN is owner of approximately 130.8 acres of real property located in El Paso County, Colorado legally described on **Exhibit A** attached hereto and commonly known as the Glen Eagle Golf Course (the "Golf Course"); and

WHEREAS, MCTN has sought approval from the County for the development of patio homes (the "Development") on the approximately 10.5 acres of the Golf Course property legally described on **Exhibit B** attached hereto, which ground is currently used in conjunction with the Golf Course; and

WHEREAS, MCTN, to pursue the Development, has prepared a Planned Unit Development ("PUD") plan and Amended Sketch Plan for the Development of a residential patio home community that includes a total of 47 lots on approximately 10.5 acres; and

WHEREAS, while it is MCTN's current intent and desire to continue operating as a golf course the remainder of the Golf Course property after subtracting the Development (the "Remaining Property", as legally described on **Exhibit C** attached hereto), if that use in the future does not remain economically viable, MCTN may desire to pursue other uses of the Remaining Property, and the County conditioned its approval of the Development on MCTN agreeing to limit future uses of the Remaining Property, and this Agreement is being tendered to the County to satisfy that condition.

AGREEMENT

NOW THEREFORE, based on the Recitals stated above which are incorporated herein, the mutual covenants set forth herein and other good and valuable consideration as set forth below, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Condition Precedent. Approval of this Agreement by the County is a condition of the approval of the PUD rezoning request and the Amended Sketch Plan for the Development, and, once this Agreement has been approved by the County following a public hearing thereon, MCTN shall execute this Agreement and provide said executed copy to the County within ten (10) days following the hearing and approval. MCTN understands that this Agreement is subject

to approval by the County, and if the County does not approve this Agreement, the PUD plan and Amended Sketch Plan and this Agreement shall all be null and void.

2. No Assurance of County Approvals. MCTN understands and agrees that by executing this Agreement, there is no assurance that the Board of County Commissioners will approve the same. MCTN, for itself and for its successors and assigns, understands and agrees that (i) this Agreement does not provide any assurance to MCTN, and its successors and assigns, that the Board will approve any future zoning applications and/or Amended Sketch Plans for the Development or Remaining Property or any final plats for the Development or Remaining Property, and (ii) no representations or promises are made or implied herein by the County, and/or that by approving this Agreement the County will approve zoning applications and/or Amended Sketch Plans or final plats for the Development or Remaining Property.

3. Controlling Regulations for Land Use Approvals. MCTN, and its successors and assigns, agrees that all land use approvals for subdivision of the Development shall be in accordance with the El Paso County Land Development Code, applicable County Master Plan(s), applicable development fees, applicable requirements in accordance with the El Paso County Engineering Criteria Manual ("ECM") for on-site and off-site public improvements, all in effect at the time review and approval is sought for any filings within the Development. This Development Agreement is not intended to address the public health, safety and welfare issues related to the Development, all of which shall be addressed during the processing of the Preliminary Plan and Final Plat pursuant to all applicable laws and County regulations and procedures in effect at that time, which regulations shall include, but shall not be limited to, the County's Land Development Code (the Code) and the Engineering Criteria Manual (the ECM). Notwithstanding the foregoing, the County and MCTN agree that MCTN may seek design deviations or waiver or modifications, which will be addressed in the final platting process, but that this Agreement does provide any assurance concerning approval of any requested waiver.

4. Limitations on Future Uses of Golf Course. The County agrees that the Remaining Property, and any improvements thereon, may continue to be utilized as a golf course. Given that MCTN represented to the Board at the time of rezoning to PUD that MCTN required rezoning in order to invest proceeds from the sale of lots back into the golf course and in order to keep the golf course economically viable, MCTN agrees to utilize a substantial portion of the net revenue MCTN receives from the Development for capital investment into the golf course on the Remaining Property or to subsidize the use of the Remaining Property as a golf course. Upon any request to change the use of the Remaining Property, MCTN agrees and understands that the County, as part of the application requirements for any such change of use, may require MCTN to provide sufficient documentation that it made reasonable efforts to keep the golf course economically viable from the reasonable investment of proceeds from lot sales into the golf course. MCTN agrees that it will not pursue a change in the use of the Remaining Property from its current use as a golf course as long as it is able to obtain and maintain at least 200 actual full dues paying club members (the "Break Even Number") at a dues rate of $1,500.00 per year for a full golf membership, with that dues amount to be escalated annually by the change in the Index (as hereinafter defined). The 200 actual full dues paying members can be achieved by any combination of full golf memberships (at the rate set forth above) and pool only memberships, with three pool only memberships (currently $500.00 per year) to be counted

as one of the required 200 full dues paying memberships. For the purposes of this Paragraph 4, the "Index" shall mean the Consumer Price Index for All Items for All Urban Consumers (often referred to as the "Cost-of-Living Index"), published by the Bureau of Labor Statistics of the Department of Labor of the United States Government. If MCTN is unable to obtain or maintain dues paying members at the Break Even Number, then commencing on or after January 1, 2012 and thereafter, MCTN may propose to the County to convert the Remaining Property to any other uses as provided for hereinafter. For purposes of this Paragraph 4, the portion of the Remaining Property that currently comprises the clubhouse, pool area, parking areas and paved areas are collectively referred to as the "Improved Area" and are identified on **Exhibit D** Subject to the condition set forth above regarding the failure to obtain or retain the Break Even Number, MCTN, its successors and assigns, shall be permitted to submit to the County appropriate land use applications to provide for the future use of any portion of the Remaining Property (including the Improved Area) for any of the following uses (the "Permissible Uses"). The following list of Permissible Uses does not express or imply compliance with the County's existing or future master plan or policy plan, nor does such list of Permissible Uses provide assurance of County approval for any such uses.

a) Conveyance to and acceptance of the Remaining Property or portions thereof by the County or to another entity or agency acceptable to the County as a public park for open space and trails, either reserving or not reserving to the owner the existing Improved Area and any reasonably needed access therefor;

b) Retention as private open space as designated on the Gleneagle Master Plan dated January 23, 1985;

c) Establishment of either public or private open space through a grant of a conservation easement, either with or without the retention of rights to the future use and redevelopment of the Improved Area and any reasonably needed access therefor for any of the commercial purposes set forth below;

d) Use for other outdoor recreational opportunities that are compatible with the surrounding residential area and do not require construction of any new structures which would materially impact views;

e) Use for outdoor athletic purposes with related improvements such as athletic fields and improvements that do not materially detract from open space and views, such as bleachers and refreshment stands, and which are compatible with the surrounding residential area;

f) Use as an equestrian club or facility for horseback riding and related equestrian activities and facilities, including construction of related corrals and arenas, as well as barns and indoor arenas, within the Improved Area;

g) Use of the Improved Area as a private or public restaurant with retail sales through use of the existing improvements (with remodeling) while preserving the existing surrounding open space;

h) Use for botanical gardens;

i) Use for agricultural purposes, including use for community garden spaces, but excluding a pig or hog farm or other similarly objectionable agricultural uses which are not compatible with the surrounding residential area;

j) Use for educational purposes, including use of the Improved Area for new school facilities for grades up to eighth grade, with surrounding open space and athletic fields;

k) Use of the Improved Area for a new retirement community, assisted living center or nursing home with surrounding open space;

l) Use of the Improved Area for any of the permitted uses within an RR-5 zone that are highlighted with an asterisk on **Exhibit E** attached hereto; and

m) Any combination of any of the foregoing.

Any redevelopment of the Remaining Property may involve use and remodeling of the clubhouse and other existing improvements within the Improved Area for other purposes for which zoning is currently permissible or can be obtained through the County land use entitlement process. The foregoing Permissible Uses are those uses that the County would consider as potentially acceptable uses of the Remaining Property in the future, with other uses likely to be considered unacceptable. Any proposal to convert the use of the Remaining Property (including the Improved Area) to one of the Permissible Uses will address issues to protect the health, safety and welfare of the community and be subject to the normal land use review process in the County. Additionally, at any time prior to construction of vertical improvements on the Development, upon application to the County and following required hearings, MCTN may be permitted to rescind the zone change and PUD Plan for the Development and revert to the existing zoning prior to that approval of the Amended Sketch Plan and PUD Zone change, in which case this Agreement shall be deemed terminated and the Parties shall be released from any future obligations or restrictions hereunder, and MCTN shall be entitled to pursue through the County land use process any uses of the overall Golf Course property that may be desired by MCTN. Nothing in this Agreement is intended to modify the standard land use entitlement process and regulations within the County, and if MCTN desires to change the use of the overall Golf Course property or the Remaining Property in the future, it shall be required to submit and obtain approval of all required land use applications and comply with applicable laws and regulations and procedures of the County in effect at the time of submittal, including, but not limited to the Code and the ECM.

5. Duration. This Agreement shall remain in full force and effect until terminated by the parties; provided, however, that if the preliminary plan or final plat for the Development are ultimately not approved by the Board, this Agreement shall thereafter be deemed terminated and of no further force or effect and the County agrees, upon request of MCTN or its successor to record in the real property records an appropriate instrument or resolution to provide notice of the termination of this Agreement.

6. Authority. The undersigned hereby acknowledge and represent that they have legal authority to bind their respective Party to this Agreement.

7. Non-binding Effect on Individual Lot Owners/HOA. The Parties agree that the provisions and obligations set forth in this Agreement are binding upon each of the Parties but shall not be binding upon the individual purchasers of completed residential homes constructed within the Development, except to the extent those individual purchasers are members of the HOA, then they are obligated as such a member of the HOA for those HOA responsibilities specifically identified in the covenants of the Development. Specifically, the Parties agree that individual lot owners shall not be responsible individually for constructing the Public Improvements. Accordingly, this Agreement shall automatically terminate as to a lot upon which a residential home has been completed within the Development upon the first sale of that lot to an individual. The Parties intend that this Agreement shall not run with the lots upon which such residential homes are constructed following the closing on any such completed residential homes by individual purchasers.

8. Entire Agreement. This Agreement represents the complete integration of all understandings between the Parties, is the entire agreement between the Parties, and no additional or different oral representations, promises, or agreements shall be binding on any of the Parties hereto with respect to the subject matter of this Agreement, unless stated in writing and signed by all of the Parties.

9. Changes or Modifications. No modification, amendment, novation, change, or other alteration of this Agreement shall be valid unless mutually agreed to by the Parties in writing and executed as an addendum to this Agreement.

10. Severability. If any paragraph, section, subsection, clause or phrase of this Agreement is, for any reason, held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement.

11. Waiver. The waiver of a breach of any of the provisions of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or other provision of this Agreement.

12. No Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against the County or MCTN for any breach or other failure to perform this Agreement.

13. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

14. Remedies. The Parties hereby agree that if any dispute cannot be resolved by mutual agreement of the Parties, such dispute may be resolved at law or in equity. The Parties further agree and acknowledge that this Agreement may be enforced at law or in equity. In addition to any other available remedies, in the event of a breach of this Agreement, any Party

may request a court of competent jurisdiction to enter the applicable writ or order to compel the breaching Party to perform under this Agreement, and any Party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders for specific performance, to compel the other to perform in accordance with the obligations set forth in this Agreement.

15. Costs of Enforcement. Any costs incurred by the County in enforcing the terms of this Agreement against MCTN, its successors and assigns, shall be borne by MCTN, its successors and assigns. In any such action, each Party shall be responsible for its own attorney's fees regardless of which Party prevails in said action.

16. Applicable Law. This Agreement shall be exclusively interpreted, enforced and executed in accordance with the laws, rules, and regulations of the State of Colorado and of El Paso County, Colorado. The Parties understand and agree that, in the event of any litigation that may arise under this Agreement, the exclusive jurisdiction and venue shall be in the District or County Courts of the Fourth Judicial District, in and for El Paso County, Colorado.

17. Execution. This Agreement, including facsimile copies of this Agreement, may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In the event facsimile copies of this Agreement are executed, the original signatures shall be compiled and attached to form the original Agreement.

18. Recording. This Agreement shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

19. Notices. All notices or other communications to the Parties shall either be personally delivered or be sent by United States Mail, return receipt requested, postage prepaid, to the addresses set forth below or to any other address which the Parties may substitute in writing. Such notices shall be deemed received when personally delivered, or if mailed, notice shall be deemed received three (3) days after the date of mailing the same.

To the County: Board of County Commissioners
27 East Vermijo
Colorado Springs, CO 80903

With Copies to: El Paso County Development Services Department
2880 International Circle Drive
Colorado Springs, CO 80910

El Paso County Attorneys Office
27 E. Vermijo Avenue, 3rd Floor
Colorado Springs, CO 80903

To MCTN: MCTN, LLC
C/O Miles D. Scully
Gordon & Rees LLP
1101 W. Broadway, Suite 2000
San Diego, CA 92101

With a copy to: Steven K. Mulliken, Esq.
Mulliken Weiner Karsh Berg & Jolivet, P.C.
102 S. Tejon Street, Suite 900
Colorado Springs, CO 80903

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By:_____
_____, Chair

Attest:

_____
Deputy Clerk to the Board

Approved as to Form:

_____
County Attorney

MCTN, LLC,
a Nevada limited liability company

By: _____
_____

Its: Manager

Approved as to Form:

_____
Steve Mulliken, Esq. Attorney for MCTN, LLC

Exhibit A

The Golf Course

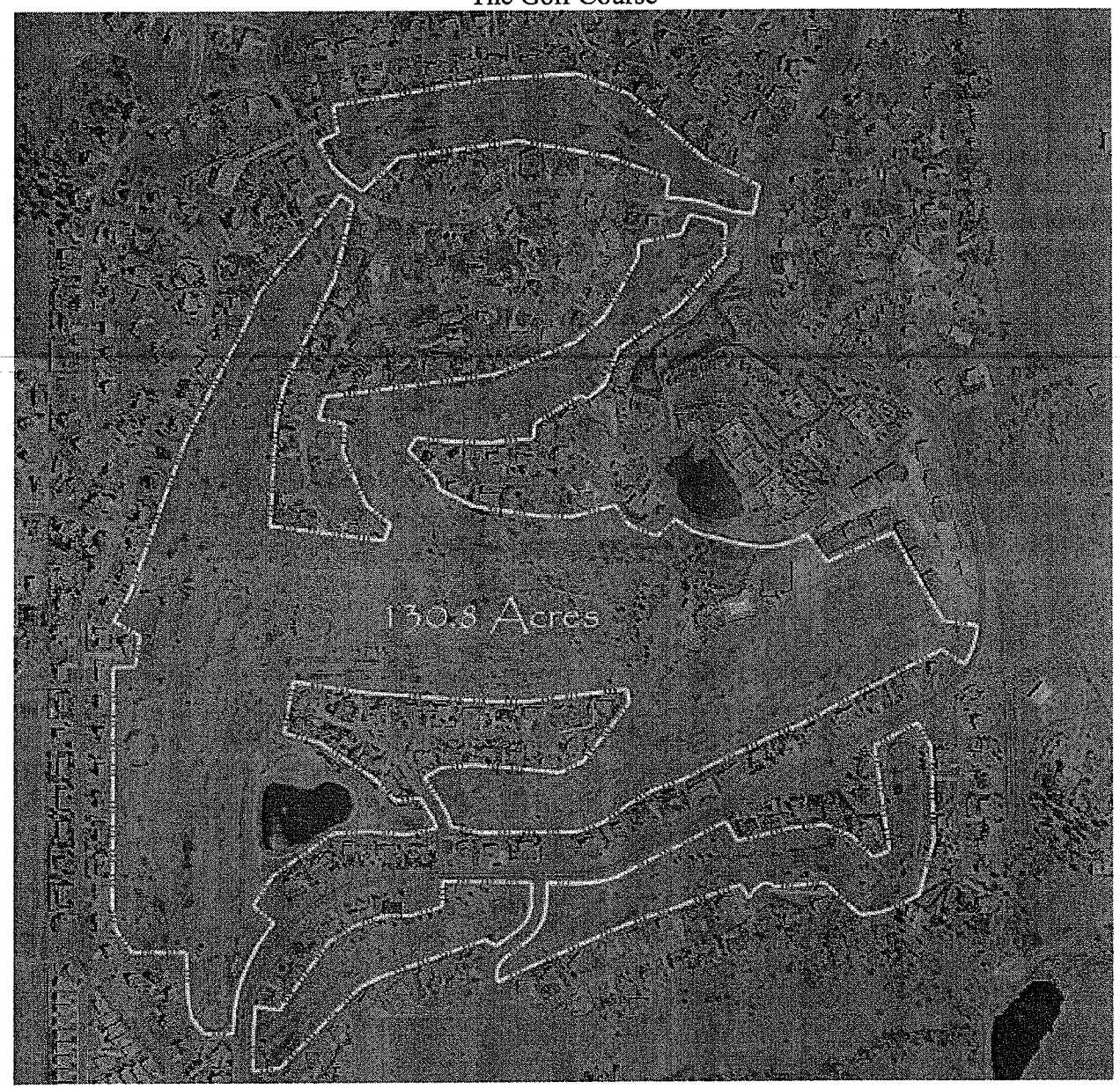

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Exhibit B

The Development

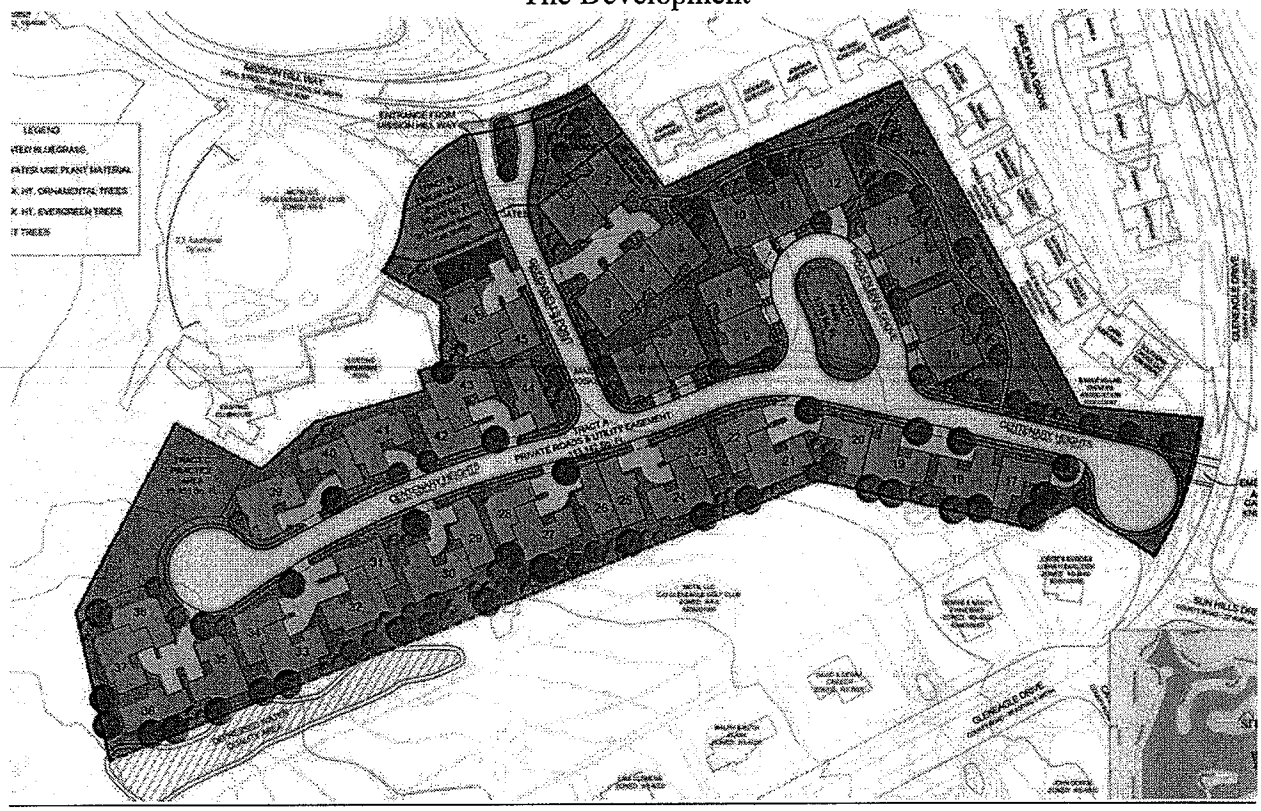

Exhibit C

Remaining Property

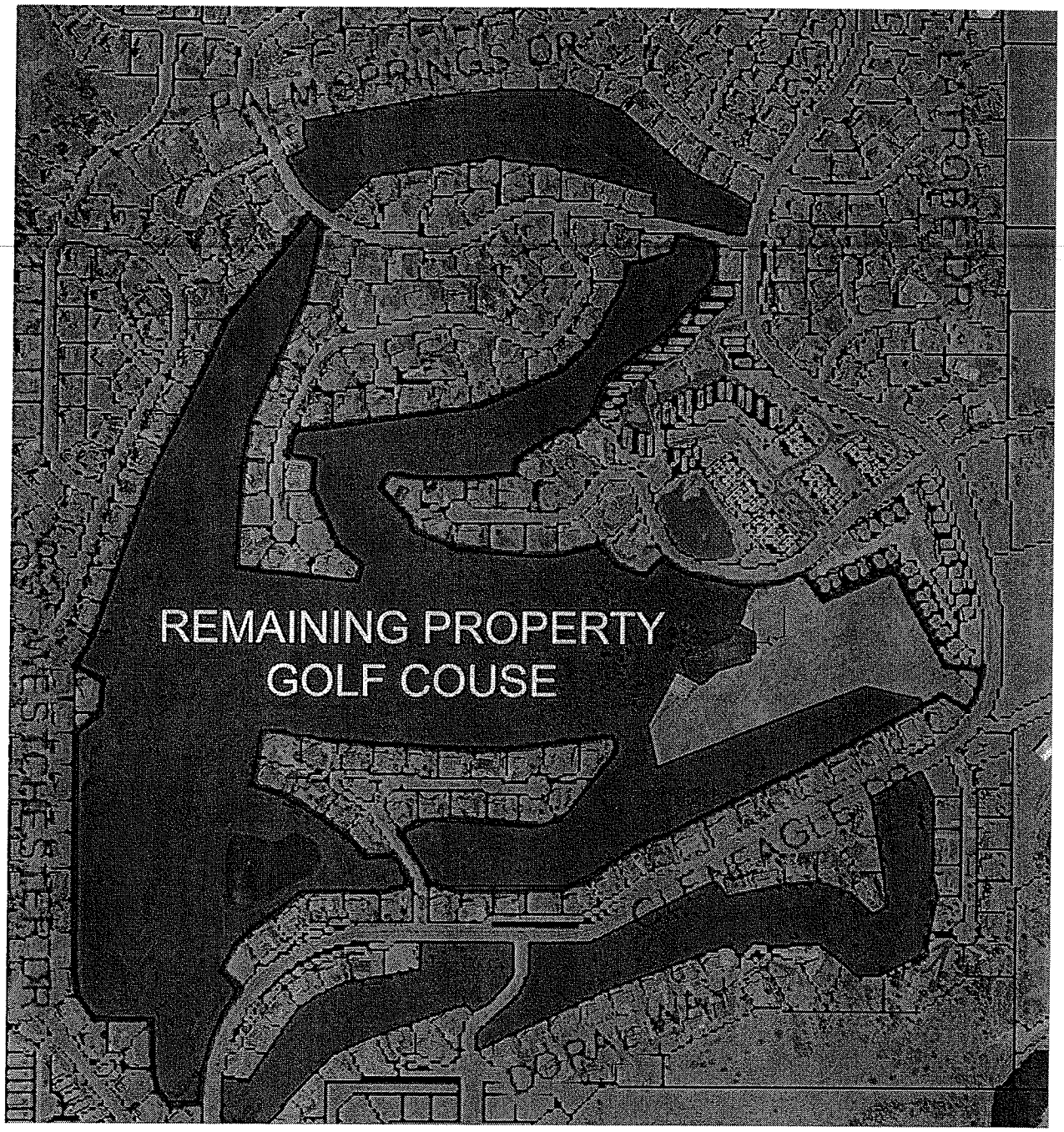

Exhibit D

Improved Area

Exhibit E

RR-5 Permissible Uses

	Principal Use	Allowed Use	Special Use	Notes
*	Adult Care Home	X		
	Agricultural Stand	X		Structure, booth or Counter for selling produce
*	Bed & Breakfast Inn		X	Minimum of 3 rooms/ Maximum of 10 rooms
	Cemetary		X	
	Child Care		X	
	CMRS Facility (Stealth)	X		Commercial Mobile Radio Service Facility
*	Commercial Stables		X	Livestock-should exclude Cows, Pigs & Stallions
*	Community Building	X		
	Dairy	X		
*	Educational-Private		X	Specify non-High School
*	Educational-Public	X		Specify non-High School
	Emergency Facility-Private		X	
	Emergency Facility-Public	X		
	Family Care Home	X		Care for Child under 18 in a home
*	Farm	X		35 Acres Min. Exclude Cows, Pigs & Stallions
	Fuel Storage w/ Ag. Use		X	
	Fur Farm	X		
*	Golf Course		X	
*	Greenhouse		X	
*	Greenhouse >1Ac		X	
	Group Home	X		Mentally Ill; Disabled
	Half-way House		X	Adults on probation/ parole
	Inert Material Disposal Site		X	
	Inert Material Disposal Site - Minor	X		
*	Institution - Philanthropic		X	
	Kennel		X	Boarding/ breeding 5+ domestic animals
*	Library		X	
	Manufactured Home	X		
	Mineral and Nat. Res. Extraction		X	
	Mobile Home, Post 1976	X		
*	Nursery, Wholesale	X		May include greenhouse
*	Private Stables	X		Livestock-should exclude Cows, Pigs & Stallions
*	Public Building, Way or Space	X		
*	Public Park and Open Space	X		
*	Ranch	X		35 Acres Min. Exclude Cows, Pigs & Stallions
	Recreation Camp		X	Cooking Facilities, temp. occupancy
*	Religious Institution	X		
	Single-Family Dwelling	X		
*	Tree Farm	X		
	Two-Family Dwelling		X	
*	Veterinary Hospital		X	

* Recommended Uses

14426 Eagle Villa Grove
Colorado Springs, CO 80921
May 3, 2010

El Paso Board of County Commissioners
27 East Vermijo Avenue
Colorado Springs, CO 80903-2208

Dear Commissioners,

I am writing to express my concerns over the Gleneagle Golf Club owner's plan to build 47 townhomes on the GGC driving range, in close proximity to numerous homes in Eagle Villas Owners Association and the Gleneagle Civic Association.

As you recall, the owner submitted a Planned Unit Development (PUD) rezone and a sketch plan amendment for your approval July 9, 2009. The submittals requested a 25-fold density increase of a 10-acre parcel from the current RR-5 zoning to PUD and a "minor" sketch plan amendment changing the use of those 10 acres from recreational open space to multi-family housing. You approved the submittals by a vote of 3 to 2, imposing a condition precedent to implementation on the owner. You directed him to submit a development agreement for your approval not later than March 31, 2010 (later extended to May 27, 2010). The wording of the condition precedent, together with your verbal direction was clear: the development agreement was to assure the Gleneagle Community that if the owner were permitted to build the townhomes on the driving range, the remainder of the golf course would continue to be operated as a golf course, *quid pro quo* for the rezone and sketch plan approval.

The owner submitted his proposed development agreement to the county on 4/15/10. In short, this document provides no substantive assurance to the Gleneagle Community that the golf course will remain a golf course. Rather, it presents a shopping list of all the possible land uses the owner is considering once he has decided to shut the golf course down. The proposed development agreement simply does not meet the spirit or intent of your direction.

EP BOCC is tentatively scheduled to consider the proposed development agreement May 27, 2010. A number of concerned citizens from Northern El Paso County will urge you to vote "no" on the proposed development agreement. According to our understanding of the requirements of the condition precedent, a "no" vote would render the conditionally approved rezone and sketch plan amendment null and void, thereby precluding construction of the 47 townhomes on the driving range. It would be in the best interests of the citizens of El Paso County if the proposed land use project were not allowed to proceed any further.

The conditional approval has already had a devastating effect on the housing market in Eagle Villas, on community bordering the driving range. Two properties are currently for sale. Both sellers have told me that, when prospective buyers learn about the uncertain future of the driving range, they walk away from further discussions. The uncertainty makes it impossible to set a sales price. Although my wife and I are not currently selling, we suffer from the same uncertainty. Do we own golf course property, or are we 3 or 4 rows of houses back? The difference in our property value, as best we can determine, is about $100,000.

This project, if approved, will not only have deleterious impacts on property values. It will also adversely affect community character, quality of life, and public safety, just to name a few. It will also set a dangerous precedent, demonstrating that the County Master Plan can be changed at the stroke of a pen, and crucial provisions of the Land Development Code can be conveniently ignored. This, in turn, sends the strong message to current and prospective property owners in El Paso County: "Expect no protection from the County Master Plan and Land Development Code when owning or buying property in El Paso County."

Thank you for your consideration.

Very respectfully yours,

Douglas H. Jenkins Jr.

14420 Eagle Villa Grove
Colorado Springs, CO 80921
May 5, 2010

Commissioner Williams,

I am once again asking for your assistance in the matter of the Gleneagle Golf Course Development Agreement. The owner of the course has demonstrated once again that he is only marginally following the BOCC's guidance. Paragraph 4 of the development agreement suggests that 200 memberships would be the magic number to insure that the golf course remains viable. He submits no business plan, marketing plan, or any other plan that explains how he intends to do this. He is hoping that the board will take his good intentions (his words not mine) and approve the plan. Once approved, he can then say that the 200-member number was not achievable and he will then develop the rest of the golf course as prescribed under the zoning provisions or otherwise dispose of the property as he sees fit.

I have given considerable thought to the BOCC's decision to give conditional approval to the rezone and sketch plan last July. I am more convinced now than I was then, that it is not the BOCC's jurisdiction to underwrite the success of the golf course. By attaching a condition in July, you have really crossed that line and involved yourselves in the success or failure of the golf course. I understand that you thought it would serve no useful purpose for the residents of northern El Paso County to see the golf course fail, however there is ample evidence that the course is a valuable property as is, and would attract buyers that could operate it at a profit. To that end I am citing the sale of Iron Eagle Golf Course in California. It too was in dire financial circumstances and was failing. Within months a concerned group of citizens purchased the course and hired professional management. It is now on a sound footing. Of course there may be many differences between the problems GGC and Iron Eagle found themselves in, but the bottom line is that the market solved the problem, not a local government body.

I have noted that you are planning a run for County Clerk. If you are elected to this position, I would think it would be in your interests to maximize income to the county. One way of doing this is by maintaining property values as high as possible. Here in Eagle Villas our property values will decrease by $100,000 each as estimated by our real estate advisors if the development agreement is approved. This does not include the loss of property values on other parts of the golf course. The property values and the overall tepid support for the development agreement in the greater community should provide guidance as you reach your decision to approve/disapprove the development agreement.

It is my opinion that the proposed development agreement is vague at best and really doesn't explain how the conditions you outlined in July will be accomplished. I am respectfully asking you to vote to disapprove the plan when it comes before the BOCC.

Thomas J. Morse

Re:
14306 AND 14312 Eagle Villa Grove
Colorado Springs, CO 80921

Date: May 7, 2010

From:
Southern Cross, LLC
POB 60202
Colorado Springs, CO 80960

To:
El Paso County Commissioners
27 East Vermijo
Colorado Springs, CO 80903

Subject: Building of new townhomes on driving range of Gleneagle Golf Club.

We are the owners of two Eagle Villa Townhomes overlooking the driving range and the Gleneagle Golf Club. We purchased these properties with the clear understanding that they were in a golf club community, both by the sellers and the mere fact that this has been a golf club community for some 40+ years.

Now, after reviewing documents submitted by the owner/speculator of the club, it is clear that his intention is to, as a minimum, change the use of the whole of the club property to pump equity, either by flipping it to another speculator, or following through with the process himself. Building the townhomes on the range is just the beginning of the process of the complete development of the club property.

More directly, the building of the townhomes negatively impacts the quiet enjoyment of the rights of ownership we purchased. The expansive views, quietness, darkness of night and purity of the air, are all at risk. Diminishment of these qualities has a direct, negative impact on our investment in this community.

Therefore, we strongly oppose development of any part of the Gleneagle Golf Club property, or any passage of a development plan that would lead to change of the present use of the club property.

Please vote no.

Respectfully submitted,
Southern Cross, LLC.
, MANAGER

May 8, 2010

El Paso Board of County Commissioners
27 East Vermijo Avenue
Colorado Springs, CO 80903-2208

Dear Commissioners,

Mr. Jenkins' letter dated May 3, 2010 clearly underlines the dangers and deleterious impact the building of the town homes on the Gleneagle Golf Course driving range would have not only on the Eagle Villas but on the whole community. Although my home is not directly on the golf course, I have always enjoyed the spaciousness it creates in Gleneagle. Otherwise what would distinguish our neighborhood? We would be just another Briargate with house on top of another house with no elbow room.

The reason most of us bought in this area was because of the attractive layout, the houses interspersed along the golf course. The basic draw to our neighborhood is this feeling of spaciousness. If Master Plans of communities can be so easily ignored and discarded how can anyone be certain that the values that they invest in their homes will be preserved?

The banking/mortgage industry has already placed our financial security in jeopardy. Homes have depreciated considerably. Further development of homes on the Gleneagle Golf Course would further depreciate the value we have invested in our homes.

Sincerely,

Larysa Martyniuk
Gleneagle

14419 Eagle Villa Grove
Colorado Springs, CO 80921
May 9, 2010

El Paso Board of County Commissioners
27 East Vermijo Avenue
Colorado Springs, CO 80903-2208

Dear Commissioners,

I too am writing to express my concerns over the Gleneagle Golf Club owner's plan to build 47 townhomes on the GGC driving range, in close proximity to numerous homes in the Eagle Villas community.

I live in Eagle Villas, but not on the golf course side of our community. However, I am concerned about the devastating effect the rezone and amended sketch plan would have on property values of all the homes in our community. It has been estimated that each Eagle Villas unit bordering the golf course will suffer up to $100,000 loss in property value if the driving range is destroyed and townhomes are built. Due to the effect of comparable sales, this will bleed over to remaining Eagle Villas properties such as mine. Although the impact will be less than that for the homes on the driving range, it will be a significant burden for me and my neighbors.

Also, my home backs up to Mission Hill Way. I am very concerned about the manifold increase in traffic behind my home which would result from the 47 townhomes being contemplated for the driving range. All traffic entering and exiting the proposed townhome development will utilize Mission Hill Way. At 8 to 10 round trips per unit per day, Mission Hill Way would go from a quiet side road to a busy thoroughfare in short order. This would also affect my property value and quality of life.

If this project is approved, don't be surprised to see all 28 homes in the Eagle Villas community apply to the County Assessor for significant reductions in their assessed valuations, with the corresponding decrease in constituent satisfaction and revenues to the county.

The proposed development agreement which you will be considering on May 27, 2010, gives nothing to the Gleneagle community in return for the approval of the rezone and amended sketch plan. It merely reveals the many development scenarios the owner has in mind. It hurts the county, the community and individual home owners.

I urge you to vote "no" on the proposed development agreement and allow the zoning and sketch plan to revert to their original configurations. This would be in the best interests of the citizens of Gleneagle and those of El Paso County.

Thank you for your consideration.

Very respectfully yours,

Beverly J. Turner

14342 Eagle Villa Grove
Colorado Springs, CO 80921
May 10, 2010

El Paso Board of County Commissioners
27 East Vermijo Avenue
Colorado Springs, CO 80903-2208

Dear Commissioners,

We are writing to express our opposition to the Gleneagle Golf Club owner's request to develop townhomes on the GGC driving range adjacent to our home and others in the Eagle Villas Owners Association community.

We have owned the above referenced property since 2004. The property is currently on the market and has been for over eight months now. There have been several serious inquiries but, understandably, no offers forthcoming because of the uncertainty of the golf course project. What is certain, of course, and what we have been told by any prospective buyers, is that if the golf course proposal is approved the value of the property will be substantially diminished.

When we purchased the property we did our due diligence regarding zoning issues and relied on what we found in the County Master Plan and Land Development Code. It is now disappointing and hard to believe that we may have relied on these documents to our detriment.

We will not repeat all the history and homeowner objections of this project which are well documented, other than to say we are in complete agreement with the vast majority of local homeowners and strongly oppose the project.

We urge you to vote "no" on this proposal and thank you for your consideration.

Respectfully yours,

John and Jan Timmer

Gleneagle Civic Association
P.O. Box 31
Monument, CO 80132

May 10, 2010

RECEIVED
MAY 10 2010
EPC DEVELOPMENT SERVICES

Tony Deconinck
Project Manager
El Paso County Development Services Department
2880 International Circle
Colorado Springs, CO 80910

GLENEAGLE GOLF COURSE - DEVELOPMENT AGREEMENT
COMMENTS BY GLENEAGLE CIVIC ASSOCIATION

Dear Mr. Deconinck,

The Gleneagle Civic Association has reviewed the updated version of the proposed Development Agreement for the Gleneagle Golf Course, specifically the version stamped "Received Apr 15 2010" by EPC Development Services.

Our comments related to this document are enclosed and are herewith submitted for your consideration and use. A disc is also enclosed with an electronic version. We respectfully request that these comments be provided to the Board of County Commissioners in preparation for their consideration of the Development Agreement during their meeting on May 27, 2010.

Further to this, please be advised that the undersigned wishes to address the Board of County Commissioners on this matter during the meeting.

Please call me if you have any questions about this letter.

Sincerely,

Arthur R. Nielsen
President
Gleneagle Civic Association
709-488-8870

Enclosure: Gleneagle Golf Course Development Agreement
Comments by the Gleneagle Civic Association - dated May 10, 2010

May 10, 2010

GLENEAGLE GOLF COURSE DEVELOPMENT AGREEMENT

COMMENTS BY THE GLENEAGLE CIVIC ASSOCIATION

References: A. File Number PUD-08-004
B. File Number SKP-08-002

INTRODUCTION

1. At their regular meeting on 9 July 2009, the El Paso County Board of Commissioners granted approvals at References A & B that paved the way for a future patio home development on 10.35 acres of Gleneagle Golf Course property currently being used as a driving range.

2. The Gleneagle Civic Association (GCA) has opposed the patio home development all along for a number of reasons, including: the negative esthetic and financial impacts on nearby GCA properties, safety and welfare concerns, additional strains on community services, and impairment of the future viability of the golf course through the loss of the driving range. For these reasons, the GCA remains firm in its opposition to the patio home development.

3. However, it is the fate of the remainder of the golf course that is of infinitely greater importance and concern to the GCA than the patio home development. This will become clear from our comments hereunder related to the proposed Development Agreement.

GLENEAGLE CIVIC ASSOCIATION (GCA)

4. The Gleneagle residential areas and the golf course were originally planned and platted in a physically integrated manner. The attached map of the area (Exhibit A) makes this fact patently obvious. Today, the Gleneagle Civic Association (GCA) comprises 649 single-family residential properties in close proximity to the Gleneagle Golf Course. Of these, 187 border directly on golf course property. Most of the golf course fairways are lined with GCA properties, in many cases on both sides of the fairway. The inescapable fact is that the golf course property is so physically intertwined with the GCA residential areas that alternative uses of the property will be highly problematic. With perhaps a few exceptions, all possible alternative uses will have a very dramatic and detrimental impact on the neighboring GCA residential properties. This fact alone makes it imperative that the GCA be afforded an influential voice in any future considerations regarding alternative uses of the golf course property.

5. It is the golf course that attracted a number of GCA members to this area in the first place, and many paid a substantial premium for golf course lots. They decided to make Gleneagle their home based, in part, on the express and implied assurance that the integrated residential/golf course community would be preserved and maintained as such. That was their dream, and that was the assurance they paid for at the time. They now expect that all parties involved in this matter (Owner, County Authorities, Developer)

May 11, 2010

TIMOTHY J. SCHUTZ

VIA FACSIMILE, EMAIL AND REGULAR MAIL
(719) 520-6695
DSDcomments@elpasoco.com

Tony Deconinck
El Paso County Development Services Department
2880 International Circle
Colorado Springs, CO 80903

Re: Gleneagle Townhomes, File Numbers PUD-08-004 and SKP-08-002

Dear Mr. Deconinck:

As you will recall, our firm serves as legal counsel to Eagle Villa Owner's Association ("EVOA"). In that capacity, we were previously provided a copy of the above referenced land use applications submitted by MCTN, LLC. In those applications, MCTN sought approval for the rezoning of the existing driving range at the Gleneagle Golf Course in a manner that would permit MCTN to convert the driving range into high density townhomes. By letter dated June 3, 2009, we communicated to the County a number of concerns associated with MCTN's proposal. A copy of our June 3 letter is attached and incorporated herein by reference.

A public hearing was held to address MCTN's proposal in July of 2009. At that hearing, numerous members of the public, in addition to EVOA representatives, appeared to express their concerns over MCTN's proposals. At the conclusion of the public hearing, the Board of County Commissioners ("BOCC") imposed stringent conditions upon MCTN which must be met before it can proceed with the contemplated development of the driving range. Your letters dated November 4, 2009 outline the development terms. In particular, the approvals of both the request for rezoning and the amended sketch plan were conditioned upon the developer meeting the following requirement:

> As a condition precedent to the development of the 10.35 acre portion of the Gleneagle Golf Course, the applicant ... shall no later than March 31, 2010 submit for Board of County Commissioner approval a Development Agreement that addresses issues to protect public health, safety and welfare, including, but not

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limited to, disposition and/or preservation of the balance of the Gleneagle Golf Course property"

("Condition Precedent"). In response to this Condition precedent, MCTN submitted a proposed development agreement in January of 2010. On February 1, 2010, we provided you with written comments concerning the substance of that proposed development agreement. A copy of my February 1 letter is attached hereto and incorporated herein by reference.

We understand MCTN has now submitted the following two documents: (1) Summary of Development Agreement ("Summary"); and (2) Development Agreement Glen Eagle Golf Course ("Revised Development Agreement" or "Agreement")). I understand the Revised Development Agreement is a revision to the earlier development agreement that was submitted by MCTN, and that the Summary is intended as an overview of that revised Agreement.

This letter is intended to address the substantial concerns that remain with respect to the Revised Development Agreement. To properly understand these concerns, it is instructive to briefly review the circumstances under which the Condition Precedent was imposed by the County, and the substantial public concerns that gave rise to it.

By way of brief review, the Gleneagle subdivision is a largely residential community developed with the Gleneagle Golf Course as its centerpiece. Scores of residences have been constructed, marketed and purchased based upon the express and implied assurance that the golf course community would be preserved and maintained. MCTN purchased the Gleneagle Golf Course with full knowledge of this history. Subsequent to purchasing the Golf Course, MCTN proposed to convert the existing driving range into a high density town home project. In various public settings, MCTN represented that it needed to make this dramatic change in order to generate the funds necessary to refurbish the sprinkler system that services the Golf Course.

The residents of Gleneagle were, and remain, concerned about MCTN's long term objectives. More particularly, the residents believe there is a substantial risk that the proposed development of the driving range is the proverbial camel's nose under the tent, and that unless expressly limited, the developer's current request will be followed by future requests to further materially change the historical use of the Gleneagle Golf Course into one or more uses that are inconsistent with the manner in which this subdivision was created and marketed. The community's intuitive concerns were amplified when, during the development review process, MCTN consistently refused to provide the residents with assurances that the Gleneagle Golf Course will be preserved. It was precisely these concerns that caused the BOCC to impose the Condition Precedent.

In imposing the Condition Precedent, the BOCC recognized MCTN was proposing to replace a driving range with an intense multi-family use. The BOCC decided that it would approve such an intense change only if the developer provided the residents of Gleneagle with written assurances that the public interest and welfare would be protected. The protection was to take the form of a development agreement that contains written assurance that the Gleneagle Golf Course would be preserved, or disposed of in a manner consistent with its historical use--as for example a conservation easement which would perpetuate the Golf Course as open space if its operation as an ongoing business should later cease. By its terms, the Condition Precedent was intended to limit future development of the Golf Course Property to the same, or substantially similar, uses as currently exist. In short, the Condition Precedent serves as a *quid pro quo*: the County would agree to approve the rezone and sketch plan, provided the developer would agree to restrict its future development opportunities with respect to the Golf Course Property.

What the BOCC did not intend was for MCTN to use the Condition Precedent as a vehicle for obtaining approval of a variety of uses, either alone or in combination, that are inconsistent with the historical use of the Golf Course. Yet, that is what MCTN has proposed in the revised Development Agreement.

MCTN still has not made the type of basic commitment concerning the future use of the golf course that was at the heart of the Condition Precedent. Instead, it attempts to preserve a plethora of options for which it may use the existing clubhouse facilities and the golf course itself, whether alone or in combination. Even with the myriad of options it has reserved for itself, MCTN still is not committing to any particular use. Indeed, under the terms of the Revised Development Agreement MCTN can even rescind the zoning change between now and 2012, provided vertical improvements have not been commenced. The Revised Development Agreement gives MCTN, in effect, an option to develop the entire property implementing the various uses contemplated by the document, without making MCTN definitively commit to any particular use. As we expressed in our February letter, and reiterate here, this leaves the community in a constant state of uncertainty concerning the future direction of the golf course.

The Revised Development Agreement still includes a provision stating that no third parties have the right to enforce the terms of the Agreement. Given the history and purpose of the Condition Precedent that led to the creation of the Agreement, this provision is inappropriate. If the Revised Development Agreement is intended to provide assurances to the neighborhood as contemplated by the Condition Precedent, the property owners in that community should be allowed to enforce the Agreement.

In the Revised Development Agreement, MCTN states that it will use a "substantial portion of the net revenue" to make capital improvements to the golf course, or to fund its future operations. That assurance is still a far cry from MCTN's representation that the townhome development was needed so that it could fund a new sprinkler system for the golf course. It seems apparent from the lack of commitment that MCTN is not committed to installing a new sprinkler system. This raises EVGA's concern about the level of MCTN's commitment to the ongoing operation of the golf course.

There is also an inconsistency between the Summary and the Agreement. The Summary states that "uses not listed as a potential future use would be considered unacceptable." Summary, para. 7. Contrast that definitive statement with the first full paragraph on page 4 of the Revised Development Agreement, where it is stated "[t]he foregoing Permissible Uses are those that the County would consider as potentially acceptable uses of the Remaining Property in the future, with other uses likely to be considered unacceptable." This provision is far less definitive, and leaves MCTN with room to argue at a later date for uses not even listed in the Agreement. If it is committed to no other uses, the Agreement should state it unequivocally.

The first sentence of that same paragraph is also disconcerting. It says "[a]ny redevelopment of the Remaining Property may involve use and remodeling of the clubhouse and other existing improvements within the Improved Area for other purposes for which zoning is currently permissible or can be obtained through the County land use entitlement process." This provision seems to suggest that the Improved Area can be utilized for any purpose allowed by the current zoning or which may be obtained through the land use process, not just the specific uses listed in the Revised Development Agreement. If that is how the provision is intended to be interpreted, then the listing of restricted uses for the Improved Area would appear to be meaningless.

Like the original draft, the Revised Development Agreement still includes a request that the development rights be vested for a period of seven years. As you are aware, section 24-68-104(1) of the Colorado Revised Statutes actually provides that development rights are vested for a period of three years, unless a longer period is warranted by unique circumstances. MCTN has made no factual showing or justification for why the statutory norm for vested development rights should be increased by an extraordinary 130%. Moreover, as noted in your letter of May 3, 2010 addressed to MCTN's design professional, under the controlling County regulations:

> In the event the person/entity is applying for vested property rights status for a PUD Development Plan that has not been platted, there shall be a finding that such vesting is necessary to enable the development to provide both on-site and off-site

> improvements to critical public infrastructure, which public infrastructure shall be for the benefit of both the development and a region beyond the development, and which infrastructure shall include, but shall not be limited, to the improvement of public road, drainage and sewer facilities, traffic control devices, etc.

MCTN has failed to identify any facts that would justify this prerequisite to the issuance of vested rights of any length, much less the extraordinary seven year period that has been requested.

Finally, perhaps the most troublesome portion of the Revised Development Agreement is the provision that allows MCTN to cease operating the golf course, and then use the property for any of the various purposes listed in the Agreement, in the event the number of golf club memberships decline below a certain level. In effect, MCTN proposes to tie the land use decisions to whether it succeeds in its business venture. We believe that such a proposal is outside the legitimate criteria the County may employ for making land use decisions, and represents poor public policy. The appropriate uses of the property should not be tied to whether MCTN succeeds in its business venture.

The above concerns are illustrative only, and not intended to be an exhaustive commentary on the problems associated with the Revised Development Agreement. As can be seen, however, the stated issues go to the very essence of the neighbors' concerns, and the resulting Condition Precedent that was adopted to address those concerns. Unfortunately, the Revised Development Agreement fails to meet either the letter or the spirit of the Condition Precedent, and for that reason, our client urges the County to reject the same.

Please feel free to contact me with any questions you may have concerning these matters. We appreciate the County's consideration of our client's ongoing concerns

Sincerely,

HANES & SCHUTZ, LLC

Timothy J. Schutz

TJS/cso
Enclosure
cc: Client