

RESOLUTION

**THE OURAY COUNTY
BOARD OF COUNTY COMMISSIONERS**

**Concerning: A Cooperative Road Agreement
for the Maintenance and Improvement of the Dave Wood Road in Ouray County**

WHEREAS, Pacific/Desert Partners, LLC (“PDP”) owns property in Montrose and Ouray Counties and is in the process of developing its property in Montrose County for residential use and such development will be known as Hideout Lake (“Development”); and

WHEREAS, the access to the Development is from the Dave Wood Road (“DWR”) in Montrose County; however travel to Hideout Lake must occur on a portion of DWR in Ouray County as well and the approvals given to PDP in Montrose County will result in certain impacts to DWR in Ouray County and the Board of County Commissioners of Ouray County (“Board”) wishes to ensure that such impacts will be mitigated by PDP; and

WHEREAS, the Board has been working with its neighboring counties of Montrose and San Miguel to address certain regional impacts on the DWR (Horsefly Road in San Miguel County) as a result of population growth and development in the area of the DWR; and

WHEREAS, the Board entered into that certain Memorandum of Understanding Dave Wood Road/Horsefly Road on June 4, 2007 (“MOU”), which MOU described certain expected impacts in the area of DWR and how such impacts may be appropriately addressed by each County and the United States Forest Service (“USFS”); and

WHEREAS, as part of the MOU, the parties recognized that there is a desire to address the impacts to DWR, keeping in mind the safety of the citizens of Ouray County and the traveling public, the safety and mortality of the wildlife that have natural habitat in the area of DWR, and a desire to have the DWR maintain a rural character; and

WHEREAS, in conjunction with the MOU, Montrose County entered into a Cooperative Road Agreement for the Maintenance and Improvement of the Dave Wood Road on July 6, 2007 (“Montrose CRA”) that, in part, required PDP to negotiate and agree with Ouray County regarding the scope and cost of improvements to DWR in Ouray County; and

WHEREAS, PDP and Ouray County have been negotiating the terms of an agreement to address the impacts to the DWR in Ouray County as a result of the Hideout Lake development in Montrose County; and

WHEREAS, the Board is prepared to approve the Cooperative Road Agreement for the Maintenance and Improvement of the Dave Wood Road in Ouray County (“Ouray CRA”) in order to address the impacts that the Hideout Lake development in Montrose County will have on the DWR in Ouray County; and

WHEREAS, no land use approvals have been given to PDP in Ouray County and the Board wishes to make clear to PDP and other interested parties that the Board, by approving the Ouray CRA, does not and has not granted any approvals to PDP for its property in Ouray County; and

WHEREAS, the Board understands that issues remain about the status of PDP’s access for its proposed Development in Montrose County and the portion to be developed in Ouray County relative to those segments of DWR that cross USFS property; and

WHEREAS, the Board of County Commissioners of Ouray County, Colorado ("Board") is empowered under C.R.S. §30-11-107(a) to "make such orders concerning the property belonging to the county as it deems expedient"; and

WHEREAS, the Board is empowered under C.R.S. §30-11-107(e) to provide for the management of the business and concerns of the County; and

WHEREAS, the Board has concluded that approving the Ouray CRA and entering into such agreement with PDP is in the best interests of the citizens of Ouray County as the agreement addresses the potential impacts to DWR as a result of the Hideout Lake development in Montrose County by requiring certain improvements to DWR as well as requiring future maintenance of DWR;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO, AS FOLLOWS:

1. The Cooperative Road Agreement for the Maintenance and Improvement of the Dave Wood Road in Ouray County, attached hereto as Attachment A, is approved and the Chair is authorized to sign the agreement, to be effective upon receipt by Ouray County of a Commitment Guaranty (as such term is defined in the Ouray CRA) in a form acceptable to the Board.
2. PDP's use of the DWR in Ouray County for its development in Montrose County is specifically conditioned upon its compliance with all of the terms and provisions of the Ouray CRA.
3. The approval of the Ouray CRA is not approval of any proposed land use activities by PDP in Ouray County.

Approved and adopted this _____ day of _____, 2008.

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

ATTEST:

K. Keith Meinert, Chair

Michelle Nauer,
Clerk and Recorder

Don Batchelder, Vice-Chair

By: _____
Linda Munson-Haley,
Clerk of the Board

Heidi M. Albritton, Member

COOPERATIVE ROAD AGREEMENT FOR THE MAINTENANCE AND IMPROVEMENT OF THE DAVE WOOD ROAD IN OURAY COUNTY

THIS COOPERATIVE ROAD AGREEMENT FOR THE MAINTENANCE AND IMPROVEMENT OF THE DAVE WOOD ROAD IN OURAY COUNTY (“Agreement”) is made and effective this 28th day of April, 2008 (“Effective Date”) by and between the Board of County Commissioners of Ouray County (“Ouray County”) and Pacific/Desert Partners, LLC, a Colorado Limited Liability Company (“PDP”) and the Paxton Lake Ranch Metropolitan Districts Nos. 1 and 2, quasi-municipal corporations and political subdivisions of the State of Colorado (“District”) and PDP and District may collectively be referred to herein as “Paxton”, as follows:

WHEREAS, PDP owns property in Montrose and Ouray Counties and is in the process of developing such property for residential use, including a golf course, in both counties, and such development will be known as Hideout Lake (“Development”); and

WHEREAS, PDP has received certain approvals from Montrose County and is anticipating its final plat approval from Montrose County for Hideout Lake in 2008; and

WHEREAS, the access to Hideout Lake is from the Dave Wood Road (“DWR”) and Montrose County Road EE58, in Montrose County, however travel must occur on a portion of DWR in Ouray County as well and the parties recognize that the approvals given to PDP in Montrose County will result in certain impacts to DWR in Ouray County and the parties wish to ensure that such impacts will be mitigated by PDP; and

WHEREAS, the parties recognize that there is a desire to address the impacts to DWR, keeping in mind the safety of the citizens of Ouray County and the traveling public; the safety and mortality of the wildlife that have natural habitat in the area of DWR and a desire to have the DWR maintain a rural character; and

WHEREAS, Paxton has entered in to that certain Cooperative Road Agreement for the Maintenance and Improvement of the Dave Wood Road with the County of Montrose dated July 6, 2007 (“Montrose CRA”) and Section I(c) of the Montrose CRA provides that:

The scope and the cost of the North DWR Improvements to be completed in Ouray County, shall be independently negotiated between PDP and Ouray County in accordance with Ouray County standards, in effect as of the date of this agreement, and the security for construction of such improvements shall be provided for in a subdivision improvements agreement to be entered into by PDP and the County prior to final plat approval. PDP and Ouray County shall negotiate their agreement in good faith and within 45 days of Montrose County’s approval of this Cooperative Road Agreement. However, if PDP and Ouray County cannot reach agreement within this period, PDP or Ouray County shall immediately notify Montrose County of such impasse in the negotiations. Upon receipt of such notice, Montrose County may schedule final plat approval for the development and take action to approve such plat as appropriate under Montrose County regulations upon 21 days advance notice to Ouray County. In the absence of such an agreement between Ouray County and PDP, PDP agrees that Montrose County may condition such final plat approval on PDP’s agreement to a subdivision improvements agreement providing for construction by PDP of any road improvements to DWR as may be required in accordance with applicable AASHTO standards and/or Ouray County standards, in effect as of the date of this agreement, and

providing for such reasonable collateral as Montrose County deems adequate to secure construction of such road improvements.

WHEREAS, PDP and District agree that it is appropriate for PDP and District to fund certain repairs and improvements to the DWR in Ouray County as a result of the present and future impacts of Hideout Lake on the DWR in Ouray County; and

WHEREAS, the parties desire to set forth a mechanism through which Paxton can perform work on DWR in Ouray County or contribute funds for the purpose of performing improvements and maintenance to DWR;

NOW THEREFORE, in consideration of the mutual covenants recited herein and agreed to by the parties, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Paxton Annual Maintenance Plan and Budget.

1.1. Paxton and Ouray County will meet and confer each year and agree upon a DWR Maintenance Plan and Budget for routine road maintenance and repair work on DWR. Prior to the commencement of construction activities within the Development by Paxton in 2008, Paxton will commit to pay to Montrose County \$50,000, to be used for routine road maintenance and repairs on DWR in Montrose and Ouray Counties. The parties shall prepare their initial DWR Maintenance Plan and Budget beginning with Ouray County fiscal year 2009, on the condition that prior to such time, Paxton receives final plat approval for the Development from Montrose County, and such final plat is recorded. In the event that Paxton intends to use DWR for construction activities during the 2009 construction season, and Paxton has not received final plat approval for the Development from Montrose County prior to the 2009 construction season, Paxton shall commit to pay at least \$50,000.00 to be used for routine road maintenance and repairs on DWR in Montrose and Ouray Counties for calendar year 2009. For all subsequent years, the parties shall meet annually during the term of this Agreement by August 1 to prepare the DWR Maintenance Plan and Budget for the up coming year. The Ouray County Road and Bridge Superintendent shall review and make recommendations to the Ouray County Board of County Commissioners who shall ultimately approve each DWR Maintenance Plan and Budget on behalf of Ouray County. If the parties fail to adopt a budget in a given year, the parties shall use the budget adopted in the prior year which shall be adjusted for inflation from the prior year based upon the most recent United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, plus a percentage for the net percentage change for "local growth" as described in TABOR.

1.2. In compiling each DWR Maintenance Plan and Budget, the parties shall address the following elements:

1.2.1 General repair and maintenance work anticipated for the coming year for DWR, which may include, but not be limited to, (prior to paving) grading of road surface, placement of additional gravel where needed, maintenance of ditches and maintenance or repair of culverts and at least two applications of magnesium chloride, and in the event paving occurs, resurfacing and crack sealing, as well as the anticipated cost and expense for the work; and

- 1.2.2 Winter maintenance, only if winter access to DWR is requested by Paxton and approved by Ouray County, anticipated in the coming year for DWR, as well as the anticipated cost and expense for the work;
- 1.2.3 The approved DWR Maintenance Plan and Budget shall establish the timing and frequency of payments and whether the contribution by Paxton will be in the form of cash payments. Unless otherwise stated in the adopted budget agreed to by Paxton and Ouray County, Paxton will contribute its share of the funds in four equal payments, which shall be paid to Ouray County each year on January 1, April 1, July 1 and October 1.
- 1.2.4 Reasonable overhead and administrative costs anticipated to be incurred by Ouray County.
- 1.2.5 Ouray County shall, to the extent feasible, work with Montrose County to accomplish the necessary annual maintenance and repair work to DWR cooperatively with Montrose County.

1.3. The Paxton payment for maintenance shall be in an amount that is equal to seventy-five percent (75%) of the budgeted amount established by the DWR Maintenance Plan and Budget approved for that year, provided that in no event will Ouray County be obligated to contribute an amount that exceeds the budgeted funds which have been assigned for usage in that region of Ouray County where DWR is located. Ouray County and Paxton shall meet and confer in good faith and reallocate the percentage of costs attributable to Paxton should circumstances reasonably warrant such re-adjustment, such as by way of example, Ouray County approves any new developments that use DWR.

1.4 Paxton may propose and Ouray County may approve in advance in its reasonable discretion, in-kind services which are proposed to be undertaken by Paxton. If approved, Paxton shall be credited with an amount equal to the fair value of in-kind services, using private contractor costs, it has provided for Ouray County against Paxton's payment obligations hereunder. The parties may establish mechanisms in an annual DWR Maintenance Plan and Budget to allow Paxton to undertake elements of the DWR Maintenance Plan and Budget and obtain a cost credit for the completed work. In the event Paxton provides funds to Montrose County and Montrose County, pursuant to an intergovernmental agreement with Ouray County, performs maintenance on DWR, Paxton shall be credited with the amount paid to Montrose County for such services and, Paxton shall be relieved from any obligation for payments to Ouray County for the same services.

1.5. Nothing herein shall limit or preclude Paxton from undertaking necessary maintenance and repair work to DWR, consistent with an approved DWR Maintenance Plan and Budget, provided that Paxton first contacts the Ouray County Road and Bridge Department and obtains their permission to do such work. An election to do such work shall not necessarily entitle Paxton to a credit for in-kind services unless approved by Ouray County.

1.6. Ouray County agrees to use contributions made by Paxton under this Agreement only for work and improvements indicated on the DWR Maintenance Plan and Budget and not for other Ouray County road or infrastructure projects and County will cause such work to be completed in a reasonably prompt and diligent manner. Any funds contributed by Paxton and not used in a particular year shall be credited against the share allocated to Paxton in the next year.

1.7. In the event that Paxton fails or refuses to make its prorata payment as required by this Agreement, unless the failure is attributable to a good faith dispute that Paxton has communicated to Ouray County, Ouray County may elect to pursue its remedies provided for in this Agreement and may also elect to suspend or terminate its maintenance work under this Agreement and may take any other statutory or regulatory action available to Ouray County to enforce compliance. Paxton agrees that in the event of the failure to make any payments as set forth herein for DWR Maintenance, unless the failure is attributable to a good faith dispute that Paxton has communicated to Ouray County, Paxton, its agents, contractors, subcontractors, employees and representatives shall discontinue use of the DWR for construction traffic, commercial traffic or truck traffic until and unless such payments have been made.

2. **DWR Extraordinary Maintenance.** Occasional and extraordinary maintenance of DWR may be necessary in the future. Paxton and Ouray County shall work cooperatively to identify the need for such maintenance and to contain costs associated with meeting those needs. Whenever Paxton and Ouray County agree that extraordinary maintenance is necessary to maintain a safe travel standard on DWR, Paxton shall contribute, in the form of cash payments seventy-five percent (75%) of actual costs incurred in undertaking the agreed upon extraordinary maintenance, subject to such reallocation of Paxton's percentage contribution as provided for in Section 1.3 herein.

3. **Additional Maintenance.** Paxton may, with Ouray County's prior written agreement, perform maintenance to DWR that is in addition to annual routine and extraordinary maintenance, at Paxton's expense ("**Additional Maintenance**"). Paxton shall indemnify and save harmless Ouray County from any and all suits, actions or claims of every nature and description arising as a result of Paxton's performance of such Additional Maintenance. Paxton agrees to pay any and all judgments rendered against Ouray County on account of any such suit, action or claim, together with all reasonable expenses and attorney's fees incurred by Ouray County in prosecuting or defending such suit, action or claim.

4. **Improvements to DWR.**

4.1 **DWR Improvements, Phase 1 of 2:** Prior to recordation of the final plat for the first phase of the Development, Paxton shall pay to Ouray County, or Montrose County if so directed by Ouray County, such funds as are determined to be necessary by Ouray County in its reasonable discretion, after consultation with Paxton, or provide to Ouray County security, in a form acceptable to Ouray County, which may include, without limitation, a surety bond, or irrevocable letter of credit, to complete all of those improvements to the Ouray portion of DWR, which is located approximately between mile marker 9.4 and mile marker 16.5 ("Ouray Portion of DWR"), to Ouray County standards for a Collector Road (not including asphalt or right-of-way acquisition), or such other specifications as may be engineered according to AASHTO standards and approved by the Ouray County Engineer ("**DWR Improvements, Phase 1 of 2**"). The actual amount of funds or security for the completion of the DWR Improvements, Phase 1 of 2 is detailed in Section 5.1 set forth below. The Phase 1 of 2 DWR Improvements shall be completed within the latter of fifteen months or two complete construction seasons at the Development subsequent to the recording of the final plat for Phase I of the Development, with work commencing immediately and continuing as is reasonably possible due to weather and availability of labor and materials. Paxton agrees that the final plat for Phase I of the Development shall not be recorded in Montrose County unless and until the funds or security described herein has been pledged as directed by Ouray County. Paxton shall provide Ouray County with written notice within five days of a request for final plat approval has been submitted

to Montrose County by Paxton; five day's advanced written notice of any scheduled meeting with Montrose County at which the final plat for the first phase of the Development will be considered for approval, and written notice within five days of any approval of a final plat of the Development.

4.2 DWR Improvements, Phase 2 of 2: As required in the Montrose CRA, upon the issuance by Montrose County of any residential building permit for the initial construction of a residence on any lot within the Development, a one-time \$10,000.00 fee per lot for each such residential building permit ("Hideout Lake Impact Fee") shall be collected by Montrose County prior to the issuance of any building permit for any lot within the Development. Pursuant to Section III(e) of the Montrose CRA, the revenue generated from the Hideout Lake Impact Fees shall be used to complete the DWR Improvements, Phase 2 of 2, as defined herein, which shall include paving of DWR within the Ouray Portion of DWR and the Montrose Portion of DWR. Ouray County may enter into an intergovernmental agreement with Montrose County which may allow Montrose County, upon receipt of the Hideout Lake Impact Fees, to either pay to Ouray County a portion of the Hideout Lake Impact Fees or use a portion of the Hideout Lake Impact Fees on Ouray County's behalf to pave the Ouray Portion of DWR in accordance with Ouray County Road Standards for a Paved Collector Road ("**DWR Improvements, Phase 2 of 2**"). While the DWR Improvements, Phase 2 of 2, will be completed only when sufficient funding from the Hideout Lake Impact Fees is available, Paxton shall prepare and submit to Ouray County for its review and approval, detailed engineering plans for the DWR Improvements, Phase 2 of 2, at such time as the traffic on DWR at the southern Ouray/Montrose County Line reaches an average of 750 ADT when measured a minimum of five times over a thirty day time period. The DWR Improvements, Phase 1 of 2 and Phase 2 of 2 may collectively be referred to herein as the "DWR Improvements".

4.3. The parties understand and agree that the DWR Improvements will be undertaken on a public road, portions of which are owned, managed or maintained by Ouray County. At such time that any of the DWR Improvements are required to be completed as set forth in Paragraphs 4.1 or 4.2 above, Paxton shall prepare and submit to Ouray County for its review and approval, which approval shall not be unreasonably withheld, detailed plans and specifications prepared by a professional engineer licensed in the State of Colorado for any of the DWR Improvements. The design of the DWR Improvements, Phase 1 of 2 and Phase 2 of 2, shall take into account the type and volume of traffic expected on DWR, including the anticipated traffic from Paxton's trucks that will be hauling water on DWR as described in the Hauled Water Feasibility Study prepared by Del-Mont Consultants dated August 29, 2007, based on the maximum number of trucks at build-out as set forth in the Carter Burgess analysis dated October 25, 2007. Paxton shall cause the Phase 1 of 2 and Phase 2 of 2 DWR Improvements to be undertaken in accordance with plans and specifications approved by Ouray County, including the Ouray County Engineer ("**DWR Improvements Plans and Specifications**").

4.4. Should Paxton want to fund DWR Improvements, Phase 2 of 2, sooner than can be accomplished via the Hideout Lake Impact Fees, then Paxton shall deposit funds into an Account set up pursuant to the Montrose CRA in order to expedite such improvements and such funds shall be utilized for the DWR Improvements, Phase 2 of 2 as set forth in Paragraph 4.2 above. In the event Paxton does expedite the funding to complete the DWR Improvements, Phase 2 of 2, Paxton shall be entitled to a reimbursement of such funding so deposited at such time in the future that an equivalent amount of Hideout Lake Impact Fees have been collected by Montrose County, or at the discretion of Montrose County, Paxton shall be relieved of the obligation to deposit with Montrose County an equivalent amount of Hideout Lake Impact Fees, as provided for in Paragraph III(f) of the Montrose CRA. No such reimbursement shall occur

unless and until the DWR Improvements, Phase 2 of 2 have been satisfactorily completed and approved by Ouray County.

4.5. PDP and the District agree that all right of way acquisition costs related to any improvement or maintenance required on DWR, including any costs, expenses and legal fees associated with any required condemnation of right of way, are the responsibility of PDP and the District (“**DWR Improvements Approvals**”).

4.6. Paxton shall be required to submit a traffic control plan to Ouray County for review and approval and will implement the approved traffic control plan (“**DWR Traffic Management Plan**”) when undertaking any of the DWR Improvements. Paxton shall provide MUTCD compliant signs, traffic control devices, barricades and other safety provisions. Not more than one-half of DWR may be blocked at one time without specific County permission.

4.7. Paxton shall not commence any of the DWR Improvements in Ouray County until Ouray County has: (a) reviewed and approved the particular DWR Improvements Plans and Specifications for Phase 1 of 2 or Phase 2 of 2; (b) reviewed and approved the DWR Traffic Management Plan; and (c) issued its notice to commence work.

4.8. Paxton agrees to promptly pay any person or party providing services or materials for any of the DWR Improvements retained by Paxton at such time as such payments become due and owing and shall indemnify and hold Ouray County harmless from any costs and expenses incurred in connection with Paxton construction of any of the DWR Improvements pursuant to this Agreement.

4.9. All of the DWR Improvements shall include a plan, acceptable to Ouray County, for the implementation of revegetation and weed control treatment along the portion of DWR upon which any of the DWR Improvements shall be completed.

4.10. **Completion of DWR Improvements.**

4.10.1 At such time as Paxton has substantially completed any phase of the DWR Improvements (“**Proposed Completed DWR Improvements**”), Paxton is authorized to submit its written request to Ouray County (“**Paxton’s Completion Application**”) seeking County review and concurrence with Paxton’s determination that the Proposed Completed DWR Improvements have been completed in accordance with this Agreement. Paxton may elect to submit Paxton’s Completion Application for some, but not all of the DWR Improvements, provided that the portion of the DWR Improvements that are the subject of Paxton’s Completion Application conform to a reasonable and practical division of the DWR Improvements.

4.10.2 **Form of Paxton’s Completion Application.** Paxton’s Completion Application shall consist of the following items that relate to the Proposed Completed DWR Improvements that shall be submitted to Ouray County for its review and approval (“**County Approval Items**”):

4.10.2.1 The DWR Improvements Certification(s) stamped by Paxton’s Engineer stating that all DWR Improvements have been completed, are in place, were constructed in accordance with

the DWR Improvements Plans and Specifications and are fully operational for their intended purpose;

4.10.2.2 Any applicable inspection reports relating to the Proposed Completed DWR Improvements;

4.10.2.3 If the Completion Application is for some, but not all of the DWR Improvements, a certified, signed statement from Paxton's Engineer, indicating the portion of the Outstanding Cost of DWR Improvements and the portion of the DWR Improvements that have been completed shall be provided to Ouray County ("**Completed DWR Improvements Allocated Cost**"); and

4.10.2.4 Such other information or documentation as Ouray County deems to be reasonably necessary to review and approve Paxton's Completion Application.

4.10.3 **County Response to Paxton's Completion Application.** Upon receipt of Paxton's Completion Application, the Ouray County Engineer or its designee shall undertake an inspection of the DWR Improvements and review the submitted materials. Within thirty days of the date of a complete submission of Paxton's Completion Application, Ouray County shall either: (a) approve Paxton's Completion Application ("**Notice of Acceptance**"), or (b) issue a written notice of deficiency (stating the deficiency with particularity and the steps that Paxton must undertake to come into compliance with the Agreement)("Notice of Deficiency"). Paxton and Ouray County will work together to resolve any deficiency items to Ouray County's satisfaction and consent, which consent will not be unreasonably withheld or delayed.

4.10.4 **Effect of Completion.** The completion of the DWR Improvements, Phases 1 and 2, evidenced by Ouray County's DWR Notice of Acceptance will serve as Paxton's full compliance with its duties and obligations to construct road improvements to DWR as set forth herein. The foregoing does not relieve Paxton from its maintenance obligations and any other continuing obligations under this Agreement.

4.11 DWR Improvements Warranties.

4.11.1 Once any phase of the DWR Improvements have been accepted by Ouray County, Paxton will warrant to Ouray County for a period of two years from the DWR Notice of Acceptance ("**Warranty Period**") that such DWR Improvements were installed in a good and workmanlike manner in accordance with the provisions of this Agreement.

4.11.2 During the Warranty Period, Paxton shall make all needed repairs or replacements due to defective materials or workmanship for any of the DWR Improvements.

- 4.11.3 At the commencement of the Warranty Period, and prior to the release of the Commitment Guaranty, Paxton shall submit to Ouray County a warranty bond, letter of credit, or other security, in a form and an amount mutually acceptable to Ouray County and Paxton, to cover the warranty obligations of Paxton for the DWR Improvements.
- 4.11.4 Thirty days before expiration of the Warranty Period, weather permitting, the Ouray County Engineer shall undertake a final inspection of the DWR Improvements (“**Final County Engineer Inspection**”) to confirm that the DWR Improvements continue to meet the Ouray County Engineer’s prior review and acceptance. Ouray County shall notify Paxton in writing of either the final acceptance of the DWR Improvements (“**Notice of Final County Engineer Acceptance**”) or the non-acceptance of the DWR Improvements (“**Notice of County Engineer Rejection**”).
- 4.11.5 If Ouray County Engineer rejects the DWR Improvements, the reasons for non-acceptance shall be stated in the Notice of County Engineer Rejection and the required corrective measures to bring the DWR Improvements into compliance with the applicable Ouray County Standards or AASHTO standards shall be developed by the Ouray County Engineer with the assistance of Paxton and shall be implemented at Paxton’s sole expense. Paxton’s warranty obligations shall remain in full force and effect until any defects and deficiencies in the required DWR Improvements specified in the Notice of County Engineer Rejection have been corrected to Ouray County Engineer’s reasonable satisfaction. Should Paxton fail or refuse to implement the corrective measures required by Ouray County Engineer within the specified reasonable cure period, Ouray County at its discretion, may declare Paxton to be in default of its obligations, and following written notice to Paxton and the surety, Ouray County may, take any action available on the warranty bond, and, in addition to any such remedy, any statutory or regulatory remedies available including the filing an action at law or in equity, to secure compliance by Paxton or to recover damages for Paxton’s failure to cure the deficiencies.
- 4.11.6 If, following the Final County Engineer Inspection, the DWR Improvements are found to be in substantial compliance with the DWR Improvements Plans and Specifications, Ouray County shall promptly release the warranty bond provided by Paxton to secure Paxton’s warranty obligations.

5. Amounts for Phase 1 of 2, DWR Improvements or Commitment Guaranty.

5.1. Pursuant to Section 4.1 above, Paxton shall pay an adequate amount of money to Ouray County or shall supply to Ouray County a reasonable guaranty which may include, without limitation, a performance bond or irrevocable letter of credit, for the completion of the Phase 1 of 2, DWR Improvements as set forth herein. The amount necessary to ensure the completion of the Phase 1 of 2 DWR Improvements shall include an appropriate inflation factor to ensure that adequate funds are available to complete the work according to the proposed schedule set forth in Paragraph 4.1 above. On or before April 28, 2008, Paxton will supply to Ouray County a

complete breakdown of the component costs of the Phase 1 of 2, DWR Improvements, including necessary weed control and revegetation, which costs are subject to approval by Ouray County, which approval shall not be unreasonably withheld. Prior to the recording of the Final Plat for the first Phase of the Development in Montrose County, Paxton shall, at its sole cost and expense, submit to Ouray County, the actual funds necessary to complete the required Phase 1 of 2, DWR Improvements or supply a Commitment Guaranty for the DWR Improvements (“**Commitment Guaranty**”) in an amount equal to 120% of the total estimated cost of the DWR Improvements. The Commitment Guaranty shall be maintained until released or drawn upon as provided in this Agreement. It is anticipated that the initial amount of the funds necessary to complete the Phase 1 of 2, DWR Improvements is \$ 1,418,918.

5.2 **Form of Commitment Guaranty.** The Commitment Guaranty shall be in the form of a surety bond, irrevocable letter of credit, or other security acceptable to Ouray County. Ouray County will not unreasonably withhold its approval of the form of the Commitment Guaranty. Paxton may request and Ouray County may agree to an alternative form of security to serve as the Commitment Guaranty. Paxton shall renew the Commitment Guaranty should it be scheduled to expire prior to time the DWR Improvements have been completed pursuant to this Agreement. The failure of Paxton to do so shall be treated as an Event of Default and shall be administered in accordance with Section 6.

5.3 **Modifications or Substitutions to Commitment Guaranty’s.** The Parties agree that the type of the Commitment Guaranty may be modified or substituted by written agreement of the Parties, including at such time that the particular warranty period for the DWR Improvements has commenced, provided the form and content of any replacement Commitment Guaranty is satisfactory to Ouray County.

6. **Events of Default.** The following conditions, occurrences or actions will constitute a default by Paxton but only upon: (a) the provision of written notice stating the nature and extent of the alleged default with particularity, the steps that must be taken to come into compliance with the Agreement, and a reasonable opportunity (not less than sixty days) to cure the alleged default; and (b) the passage of the cure period:

6.1 Subject to Force Majeure, Paxton’s failure to commence or timely complete the DWR Improvements, Phase 1 of 2 as set forth herein or in any amendments to this Agreement.

6.2 Paxton’s insolvency, the appointment of a receiver for Paxton or the filing of a voluntary or involuntary petition in bankruptcy respecting Paxton.

6.3 Paxton’s failure to comply with any other material provision of this Agreement.

7. **County’s Rights Upon Default.**

7.1 In the event of default by Paxton, following notice and cure as provided for in Section 6, Ouray County may draw on the Commitment Guaranty or may pursue such legal or equitable remedies or actions, as well as any statutory or regulatory actions as it deems necessary to obtain Paxton’s compliance. Ouray County may, but shall not be obligated to, cause the DWR Improvements that have not been completed to be completed either by itself or by a third party.

7.2 Alternatively, Ouray County may assign all, or any part of, Ouray County’s rights to complete the DWR Improvements to Paxton’s successor(s) in interest (such as the District or a subsequent owner, including a lender, who has acquired the entire Property, or a

portion, by purchase, foreclosure or otherwise) who will then have the same rights of completion as Ouray County, if and only if, such successor agrees in writing to complete the unfinished DWR Improvements.

7.3 Alternatively, Ouray County may also suspend any approvals pending in Ouray County until the DWR Improvements are completed and accepted by Ouray County.

7.4 Alternatively, Ouray County the may initiate an action to compel Paxton's compliance with this Agreement.

7.5 Ouray County shall have no obligation or duty to utilize or expend any other funds or assets of Ouray County for the completion of any of the DWR Improvements described herein.

8. Term. This Agreement shall remain in effect for an initial term of 30 years and shall terminate without further action of the parties 30 years from the Effective Date, unless extended by mutual written agreement of Ouray County and Paxton. This Agreement shall also terminate automatically upon the lawful organization of an improvement or other district (not a Paxton Metropolitan District), formed, at least in part, for the purpose of maintaining DWR.

9. Traffic Monitoring Plan. Paxton will commence implementation of the traffic monitoring plan, a copy of which is attached hereto as Exhibit "A," upon the latter occurring of June 1, 2008, or the recording of a final plat for the first phase of the Development by Montrose County, and the expiration of any appeal rights relating to such final plat pursuant to C.R.C.P., Rule 106(a)(4).

10. Miscellaneous.

10.1 This Agreement shall be recorded in the public records of Ouray County.

10.2 This Agreement is binding on and inures to the benefit of the heirs, representatives, transferees, successors and assignees of the Parties. PDP's rights and obligations described herein may only be assigned or transferred upon the prior written approval of Ouray County, which approval shall not be unreasonably withheld.

10.3 Should any section, paragraph, clause or provision of this Agreement be declared by a court of competent jurisdiction to be invalid, said decision shall not affect the validity of this Agreement as a whole or any part hereof other than the part declared to be invalid, and the Parties hereby affirm that they would have entered into this Agreement and each of its provisions independently of each of its other provisions.

10.4 The parties understand and agree that this Agreement has been prepared in anticipation of, and in advance of, the contemplated work described herein. Therefore, the parties understand and agree that it may be necessary to modify or amend certain portions of this Agreement to conform to the timing or scope of the Development.

10.5 No person or entity that is not a Party to this Agreement will have any right of action under this Agreement.

10.6 In the event of default by either Party to this Agreement, following written notice and reasonable opportunity for cure, either Party may initiate an action to compel the other Party's compliance with this Agreement. Personal jurisdiction and venue for any civil action

commenced by any Party to this Agreement whether arising out of or relating to this Agreement will be deemed to be proper only if such action is commenced in District Court for Ouray County. Both Parties expressly waive their rights to bring such action in or to remove such action to any other court whether state or federal. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Either Party may pursue all available remedies in the event of a breach by the other Party. The prevailing Party in any action arising from this Agreement shall collect its costs, fees and expenses incurred in such action, including reasonable attorney fees, from the non-prevailing Party.

10.7 This Agreement may be executed in multiple counterparts or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. The facsimile transmission of a signed copy hereof or of any notice to be given to the other Party or his or her agent, shall be considered valid and constitute a signed original. A signed "hard copy" of the Agreement shall not be necessary, but may be executed by the Parties.

10.8 All notices, demands or writings in this Agreement provided to be given or made or sent that may be given or made or sent by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, certified and postage pre-paid, and addressed to the party at the following address:

County:

Ouray County Board of County Commissioners
P.O. Box C
[541 4th St.](#)
Ouray, CO 81427

With a copy to:

Ouray County Attorney
111 Mall Road
P.O. Box 28
Ridgway, CO 81432
Fax: (970) 626-4439

Paxton:

Pacific/Desert Partners, LLC
1404 Hawk Parkway, Suite 314
Montrose, CO 81401

With a copy to:

Patrick Coleman
The Coleman Law Firm, LLC
P.O. Box 1166, Montrose, CO 81402

And a Copy to:

Paxton Lake Ranch Metropolitan District No. 1
1404 Hawk Parkway, Suite 314
Montrose, CO 81401

The address to which any notice, demand or writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

10.9 Paxton covenants and agrees to indemnify, defend, save and hold Ouray County, its officials and employees, harmless from any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys fees, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with, arising out of, or by any reason related to Paxton's or its employees', officers', representatives', or agents' actions pursuant to this Agreement. Paxton shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims and demands, and shall bear all other costs and expenses related thereto, including court costs and attorney fees. The obligation of this paragraph 10.9 shall not be construed to extend to any injury, loss or damage that is caused by the act,

omission, or other fault of Ouray County, its officers or its employees. This provision shall not be construed as a waiver of any of the rights provided to County by the provisions of the Colorado Governmental Immunity Act.

11. Wildlife. PDP agrees to meet with Colorado Division of Wildlife (“CDOW”) and representatives of local wildlife conservation groups to identify ways in which PDP may mitigate impacts on wildlife relative to the design, construction and maintenance of DWR.

12. Authority. The persons executing this Agreement represent that they have the authority to enter into this Agreement on behalf of the named parties hereto and represent that they have all necessary authorization to bind the named parties hereto to all terms, conditions, and obligations contained in this Agreement.

13. Conditional Commitment Guaranty. In the event Paxton provides a Commitment Guaranty as described herein and an action is filed (“Injunction Suit”) that prohibits Hideout Lake from continuing construction, receiving a final plat and having the same recorded by Montrose County, or selling lots within the Development, or if necessary easements or permits (collectively “Authorizations”), are not issued for the improvement of Dave Wood Road, including but not limited to the issuance of any necessary utility easements, or if access to the Hideout Lake is challenged by another party in a Court (“Access Suit”), then any Commitment Guaranty and or funds provided by Paxton to Ouray County pursuant to this Agreement shall not be utilized by Ouray County until such Injunction Suit or Access Suit is resolved in Paxton’s favor, or the Authorizations are obtained. Ouray County agrees that any delays in Paxton’s performance of its obligations as set forth in this Agreement that result from an Injunction Suit, from the failure to obtain the Authorizations, or from an Access Suit, shall not be deemed events of default pursuant to this Agreement. Should Paxton desire to use DWR for construction traffic purposes during the pendency of any such delays, Paxton may do so upon the timely payment of the \$50,000.00 in the same manner as is required in Paragraph 1.1 herein.

AGREED TO AND MADE EFFECTIVE BY THE PARTIES AS OF THE EFFECTIVE DATE.

Paxton:

Pacific/Desert Partners, LLC

By: _____

Date: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

Acknowledged and subscribed to before me this _____ day of _____, 2008 by _____, the _____ of Pacific/Desert Partners, LLC.

Witness my hand and official seal.

Notary Public

My commission expires: _____.

Exhibit "A"
DAVE WOOD ROAD
TRAFFIC MONITORING PLAN

Paxton will implement a traffic-monitoring plan, as required in the Agreement. The traffic-monitoring plan is intended to verify the growth of traffic on Dave Wood Road. Traffic counts should be conducted annually during the summer months, preferably at the same time each year. Traffic counts shall continue until such time as Paxton has completed the required improvements to Dave Wood Road.

Paxton will commence implementation of the traffic monitoring upon the latter occurring of June 1, 2008, or the recording of a final plat for the first phase of the Development by Montrose County, and the expiration of any appeal rights relating to such final plat pursuant to C.R.C.P., Rule 106(a)(4).

Traffic counts to be conducted are as follows:

48-hour machine traffic counts on Dave Wood Road, in the following locations.

1. Dave Wood Road at the north Ouray County line.
2. Dave Wood Road at the entrance to the Paxton Development.
3. Dave Wood road at the south Ouray County line.

Beginning in 2008, the machines shall be operational from June 1 through August 31 of each year until the DWR Improvements have been completed.

Paxton shall provide Ouray County Road and Bridge Superintendent and the Land Use Administrator with copies of the traffic counts certified to be true and correct to the best knowledge and belief of Paxton or its consultants no later than the 10th day of each month for the preceding month during the period that traffic counts are required. In the event that the results of the traffic counts are ambiguous or inconsistent, Ouray County may reasonably require Paxton to undertake additional traffic counts on different days and/or times at the same locations and the same frequency.