

OWNER PARTICIPATION AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of September 26th, 2001, by and between the GOLDEN URBAN RENEWAL AUTHORITY ("GURA") and CLEAR CREEK COMMONS, LLC, a Colorado limited liability company ("Developer").

1. Developer's Construction Obligation. To assist GURA in carrying out the Golden Urban Renewal Plan a/k/a the Golden Downtown Redevelopment Plan (the "Plan"), the Developer agrees to redevelop the following described property: Parcel D: Lots 1, 2 and 3, Block C on the South Side of Clear Creek, Golden City, Colorado Territory, Reception No. 80009765, County of Jefferson, State of Colorado, and Lot 3, CLEAR CREEK SQUARE, County of Jefferson, State of Colorado (the "Site"), by constructing on the Site the improvements (the "Improvements") described in Attachment No. 1. The Improvements consist of the Private Improvements and the Eligible Improvements as described in Attachment No. 1. All construction shall conform with plans and specifications prepared and submitted by the Developer and approved by GURA and the City of Golden (the "City"). Prior to commencing construction the Developer shall obtain any and all permits required by the City and any other governmental agency having jurisdiction. Developer will prepare final plans and specifications for the Improvements in its discretion. The final plans and specifications developed by the Developer may contain modifications or alterations to the description of the Improvements set forth in Attachment No. 1. If on or before December 31, 2001, (i) GURA or the City does not approve the plans and specifications for the Improvements as finally submitted by the Developer, (ii) the Developer is unable or otherwise fails to obtain all necessary permits for the construction of the Improvements, (iii) Developer does not exercise its option to purchase the Site, or (iv) Developer has not begun construction of the improvements in the reasonable opinion of GURA, then either party may terminate this Agreement by giving notice thereof to the other. This Agreement shall then terminate and neither party shall have any rights against the other. "Completion of Construction" for the purposes of this Agreement means delivery of a final certificate of occupancy by the City. Developer shall achieve Completion of Construction of the Improvements on or before March 1, 2003. The Developer shall separately document and submit to GURA proper records of all costs, including invoices received and clearly identifiable as related to the design and construction of the Eligible Improvements.

2. Reimbursement for Eligible Improvements. From sixty percent (60%) of the revenue produced by the ad valorem property tax valuation and municipal sales tax increments in excess of the base valuation for such tax valuation and sales tax proceeds (as determined by GURA) to be produced and available from the Private Improvements and the Site and no other source (the "Special Fund"), GURA agrees to reimburse the Developer's lender, as approved by GURA or the Developer directly, as the case may be, for providing the funds to construct the Eligible Improvements; such reimbursement to be the lesser of the actual documented cost of the Eligible Improvements or \$159,000, plus interest at an annual rate of the lesser of 8% or the actual rate charged by Developer's lender, or as otherwise agreed to in writing by GURA, subject to the following conditions:

- a. The documents evidencing a bank loan to the Developer shall be subject to the reasonable review and approval of GURA.
- b. Payments will be made from the Special Fund quarterly beginning at the Completion of Construction; provided, however, the maximum term (the "Term") of GURA's obligation to make payments under this Agreement shall expire upon payment in full or 7 years, whichever first occurs.
- c. All payments made hereunder shall be applied first to accrued but unpaid interest and then to unpaid principal. The Developer agrees to pay in a timely manner, all principal and interest, if any, due and payable to Developer's lender, attributed to the Improvements in excess of the maximum amounts set forth in Section 2. At least annually, GURA shall provide the Developer and/or the Developer's lender a report concerning the calculation of the amounts paid into and disbursements from the Special Fund.
- d. Developer is not in default under this Agreement at the time of any scheduled payment.

CU
TAM

On September 18, 2000, the District Court in Jefferson County, Colorado, entered a ruling in Case No. 00 CV 2170 that GURA is not subject to Article X, Section 20 of the Colorado Constitution ("Amendment 1"). If at any time, by appellate court ruling or otherwise, the agreement to pay for the Eligible Improvements is deemed by GURA to be a multiple year obligation of GURA that violates Amendment 1, any annual payment due for the Eligible Improvements shall be subject to annual appropriation by GURA. In that event, GURA agrees to include the amount of each annual payment as a line item in its annual budget, and to act in good faith in considering the appropriation of the annual payment to or for the account of the Agreement.

- f. The obligation to pay for the Eligible Improvements is a limited obligation payable solely from the Special Fund. The obligation to make such payment is not a debt or general obligation of GURA, and is not a debt of the City or the State of Colorado or of any political subdivision of the State of Colorado or any other public body. Such payment shall not be payable from or constitute a charge upon any funds of GURA except from the Special Fund and then only to the extent and in the manner specified in this Agreement and in any document or instrument signed by GURA implementing this Agreement.
- g. If the Developer sells or transfers the Site, the Private Improvements prior to the earlier of the expiration of the Term or payment of the amount described in Section 2, GURA's obligation to make any further payments into the Special Fund shall terminate unless GURA approves such sale or transfer in writing, which approval shall not be unreasonably withheld.
- h. For as long as this Agreement is in effect, the Developer shall provide GURA with the date(s) and amount(s) of ad valorem property taxes paid by the Developer each year at the same time of such payment or payments.

3. **Hold Harmless and Indemnification.** In the performance of this Agreement, the Developer agrees to indemnify GURA, its officers, employees, agents and others acting on its behalf, to hold them harmless and to defend and protect them from and against any and all loss, damage, liability, cost and expense (including, without limitation, attorneys' fees and other costs and expenses of defense), of any sort whatsoever based upon, resulting from or otherwise arising in connection with any actions, claims, or proceedings brought, or any loss, damage or injury of any type, by reason of any act or omission of the Developer, its employees or agents or any other person or entity for whose acts or omissions the Developer is legally responsible.

4. **Representations and Warranties by the Developer.** The Developer represents, warrants and certifies to GURA as follows:

- a. Unless this Agreement is terminated as described in Section 1. The Developer holds fee simple marketable title to the Site, subject only to the lien of any financing necessary to construct the Improvements;
- b. There is no action or proceeding pending or, to the knowledge of the Developer, threatened against the Developer or the Site before any court or administrative agency that might result in any material adverse change in the business or financial condition of the Developer or of the Site;
- c. The Developer is not involved in any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation proceeding and, to the best knowledge of the Developer, no such proceeding is contemplated or threatened.

5. **Remedies.** If any event of default by the Authority occurs and is continuing hereunder, the Developer or Developer's lender, if applicable, may seek enforcement of the Authority's payment obligation under Section 2. In no event shall the Authority be liable for special, consequential, or punitive damages. If any event of default by the Developer occurs and is continuing hereunder, the Authority may (a) seek any available remedy at law; (b) seek enforcement of the Developer's obligations hereunder by any equitable remedies, such as specific

performance or injunction; or (c) elect to terminate this Agreement. In addition the nondefaulting party may recover its reasonable costs and attorney fees.

6. Notices. Unless otherwise notified in writing by either party, all notices required or permitted by this Agreement shall be in writing and shall be sufficiently given if delivered in person, by prepaid overnight express mail or express courier to either party or by certified mail, with postage prepaid, return receipt requested and addressed:

In the case of GURA to:

Steve Becker, Executive Director
Golden Urban Renewal Authority
1111 Washington Street, #115
Golden, Colorado 80401

In the case of Owner to:

Clear Creek Commons, LLC
Attention: T. Amory Host
1877 Broadway, Suite 701
Boulder, CO 80302

7. Further Assurances: Estoppel Certificates. The parties and any assignee or successor in interest agree to execute such additional instruments or documents and take such other actions as shall be reasonably requested by the other party to implement this Agreement. The parties agree to execute such documents as the other party shall reasonably request to verify or confirm the status of this Agreement and of the performance of the obligations hereunder.

8. Covenant of Good Faith. Each party agrees to act reasonably and in good faith in performing or attempting to perform each and every condition, covenant, obligation or duty required by the Agreement, and any other agreement implementing this Agreement, and each party shall not unreasonably, arbitrarily or capriciously withhold any approval or action required by the Agreement.

9. GURA or City Not a Partner. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, neither GURA nor the City shall be deemed to be a partner or joint venturer of the Developer and neither GURA nor the City shall be responsible for any debt or liability of the Developer.

10. City Not a Party. The City is not a party to this Agreement, and GURA is not part of the City or a department or agency of the City and is not authorized to bind or represent the City or the position of the City in any manner whatsoever, nor is the City authorized to bind or represent GURA or the position of GURA in any manner whatsoever.

11. Binding Effect. The Agreement shall be binding upon and inure to the benefit of the parties, their personal representatives, successors and assigns.

12. Amendments. This Agreement is the entire Agreement of the parties as to the subject matter herein and supersedes and replaces all prior agreements with respect to the subject matter herein and may be amended only in writing fully subscribed by the parties or their successors or assigns.

13. Repair or Reconstruction of Improvements. If the Improvements on the Site are damaged or destroyed by fire or other casualty prior to Completion of Construction of the Private Improvements, the Developer or successor in interest agrees to reconstruct or repair such damaged improvements to a condition reasonably

Golden\Clear Creek Commons OPA
September 25, 2001

X
TAA

satisfactory to GURA, within a reasonable period of time, but in any event within six (6) months of the date of such damage or destruction, or GURA may terminate this Agreement.

14. Assignment. Except as may be otherwise provided herein and except for transfers made for estate planning purposes, this Agreement or any rights or interest in this Agreement may not be assigned or transferred by either party without the prior written approval of the other party. Such approval shall not be unreasonably withheld.

15. Minor Changes. This Agreement is approved in substantially the form submitted to the Developer and to the Board of Commissioners of GURA. The officers executing the Agreement are authorized to make such minor changes in the Agreement and the attachments as may be necessary, so long as such changes are consistent with the intent and understanding of the parties. The execution of the Agreement or any document regarding such minor changes shall constitute conclusive evidence of the approval of such changes by the respective parties.

16. Enforced Delay and Performance for Causes Beyond Control of Party. Neither party shall be considered in default of its obligations under this Agreement in the event of enforced delay due to causes beyond its control and without its fault or negligence, including, without limitation, acts of God, acts of the public enemy, acts of the federal, state or local government (including any effects caused by initiatives or referendum), acts of the other party, acts of third-parties, acts or orders of court, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather or delays of subcontractors or material men due to such causes. In the event of the occurrence of any enforced delay, the time or times for performance of the obligations of the party claiming delay shall be extended for the period of the enforced delay; provided, that the party seeking the benefit of the provisions of this section shall notify the other party, within thirty (30) days after such party knows of any enforced delay, of the specific delay in writing and claim the right to an extension of the period of the enforced delay.

17. Authority. The persons executing this Agreement on behalf of parties represent and warrant that each is fully authorized to bind such party to all of the terms and conditions of this Agreement.

18. Incorporation by Reference. The attachment to this Agreement is incorporated into and made a part of this Agreement.

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

GOLDEN URBAN RENEWAL AUTHORITY

Attest

By: *Carmel Hammond, Vice*

CLEAR CREEK COMMONS, LLC, a Colorado limited liability company

By: *Thomas M. President*
Peak Properties & Development Corp
Manager

Golden\Clear Creek Commons OPA
September 25, 2001

AA
AAH

ATTACHMENT NO.
Improvements

Private Improvements

The private improvements involve the design, engineering and construction of approximately 45 units of senior housing accompanied by a commercial restaurant and about 1500 square feet of retail space. The site currently has no improvements on it and the private improvements constitute a build out of new mixed-use space in the downtown. All plans are subject to review, inspection and approval of the planning and building departments.

Eligible Improvements

Item	Description	Amount
	Fill Reimbursement	\$ 5,938
2	Landscaping/Screening	
	Drainage/Water Quality	\$ 38,000
3	Streetscape	\$ 42,300
4	Optic Fiber Relocation	\$ 15,000
5	Bike Path/Retaining Wall	\$ 46,000
6	Expense of Tap Fee Reservation	\$ 7,000
	Total Eligible Improvements	\$ 164,238

