

**AGREEMENT CONCERNING PARK CREDITS  
FOR SPRINGS RANCH GOLF COURSE**

THIS AGREEMENT, dated \_\_\_\_\_, 1999, is between the CITY OF COLORADO SPRINGS, a home rule city and a Colorado municipal corporation (the "City"), and BRE/Springs Ranch L.L.C., a Delaware limited liability company ("BRE/Springs Ranch") and Tom Tauche, Inc., a Colorado corporation ("Tauche"). BRE/Springs Ranch was the prior owner of certain property now developed as an 18-hole golf course known as the Springs Ranch Golf Course (the "Golf Course"), which is legally described on the attached Exhibit A. BRE/Springs Ranch conveyed the Golf Course to Tauche in return for Tauche's promise and covenant, among other matters, to construct and operate thereon an 18-hole golf course, club house and other facilities which shall remain open to the general public and available for play to all residents of the City and other interested golfers. Tauche has and hereby does assign to BRE/Springs Ranch all park fee credits for the Golf Course granted herein below.

The Golf Course is part of a major development within the City commonly known as Springs Ranch. As the developer of Springs Ranch, BRE/Springs Ranch is required by City ordinances and subdivision regulations to dedicate land for parks to the City or to pay park fees to the City in lieu of dedication of land. City ordinances also provide for the granting of credits for privately held land in certain instances. The parties wish to provide for park dedication credits to be awarded to BRE/Springs Ranch in consideration of the Golf Course being open to the residents of the City.

Therefore, in consideration of the mutual covenants contained herein, the City and Springs Ranch agree:

1. Park Dedication Credits. Because the Golf Course is open to the public,<sup>1</sup> the City recognizes that it satisfies the requirements and purposes of the City's ordinances concerning park dedications by providing open space and recreational opportunities for the residents of the City. The City has the power and authority to award credit for private open space pursuant to Section 15-3-

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<sup>1</sup> Notwithstanding statements contained herein regarding access by the public to the Golf Course, nothing herein shall be construed to limit the ability of Tauche and all successive owners of the Golf Course to charge fees and to establish rules of conduct, access and play upon the Golf Course.

1207A.2 of the Code of the City of Colorado Springs, 1980, as amended. Therefore, the City grants to BRE/Springs Ranch park dedication credits in lieu of actual dedication to the public of land or payment of park fees. The amount of such dedication credit is set forth in greater detail below. These park dedication credits may be used by BRE/Springs Ranch in connection with development of land within the approved Springs Ranch Master Plan in the same manner as any other park dedication credits allowed by the City, in accordance with City procedures.

2. Reimbursement of Park Dedication Credits. Tauche, for itself and all future owners of the Golf Course, reserves the right to limit public access to the Golf Course by converting it to a private club available for play only by members or otherwise restrict the right of all residents of Colorado Springs to use the Golf Course. However, if Tauche or any future owner of the Golf Course, at any time after the date of this Agreement, changes the nature or rules of the Golf Course so that it is no longer available to all residents of the City as a public golf course, then the City may revoke all park dedication credits arising from this Agreement. In addition, the then-current owner of the Golf Course shall become obligated to reimburse the City for all park dedication credits granted pursuant to this Agreement. The then-current owner of the Golf Course may reimburse the City based upon the school-park fee then in effect by any combination of cash or dedication of other park land acceptable to the City in the appropriate amount within the Springs Ranch Master Plan. In no event shall any reimbursement be less than the 1999 value of the park credits granted or issued by this Agreement. The then-current owner of the Golf Course shall reimburse the City within 30 days after receiving notice from the City of the amount to be reimbursed.

3. Amount of Credit Granted Hereunder. The City and BRE/Springs Ranch acknowledge and agree that (i) the grant of park dedication credits for the Golf Course, (in an amount not to exceed 66.5 acres which corresponds to 31.4% of the acres comprising the Golf Course), (ii) together with all parks dedicated to date to the City within the Springs Ranch Master Plan, (iii) together with the proposed 28 acre Regional Park located along Tutt Boulevard which BRE/Springs Ranch shall dedicate to the City, (iv) together with a neighborhood park located in the northeast sector within the Springs Ranch Master Plan which

BRE/Springs Ranch shall dedicate to the City (collectively the "Parks"), all combine to fully and completely satisfy all of BRE/Springs Ranch and Tauche's requirements for park dedications or fees within the Springs Ranch Master Plan. In consideration of the City's agreement to grant park dedication credits with respect to the Golf Course, BRE/Springs Ranch agrees that it shall dedicate to the City all of the Parks without requiring payment for the land, even if the land dedicated for the Parks is in excess of the land dedication requirements of BRE/Springs Ranch under City ordinances in effect from time to time. The City shall never be obligated to buy or otherwise pay for any of the land for the Park dedications, nor shall it be obligated to reimburse BRE/Springs Ranch in cash for any excess park credits accumulated with the City in connection with Springs Ranch. Correspondingly, once all of the Parks identified above have been transferred and dedicated to the City, BRE/Springs Ranch, Tauche and their respective successors shall not be required to dedicate land to the City or pay any park fees in connection with property within the Springs Ranch Master Plan. Nothing in this Agreement shall prevent BRE/Springs Ranch from seeking approval of amendments to the Springs Ranch Master Plan that change, reduce or eliminate park sites in Springs Ranch in accordance with City ordinances, policies and procedures relating to the amendment of master plans.

4. Agreement to Run with Land. This Agreement shall be recorded in the real property records of El Paso County, Colorado. It shall run with the land comprising the Golf Course as described on Exhibit A and shall be binding upon and inure to the benefit of the City, BRE/Springs Ranch, Tauche and all future owners of the Golf Course.

5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6. Effect of Agreement. All negotiations relative to the matters contemplated by this Agreement are merged herein and there are no other understandings or agreements relating to the matters and things herein set forth other than those incorporated in this Agreement. No provision of this Agreement shall be altered, amended, revoked or waived except by an instrument in writing signed by the party to be charged with such amendment, revocation or waiver.

7. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the parties that the remainder of the Agreement shall not be affected and that in lieu of any such clause or provision there be added as a part hereof a substitute clause or provision as similar in terms and effect to such illegal, invalid or unenforceable clause or provision as may be possible.

CITY OF COLORADO SPRINGS  
a home rule city and Colorado municipal  
corporation

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Wynetta Massey,  
Senior Corporate Attorney

BRE/SPRINGS RANCH, L.L.C.,  
a Delaware limited liability company

By: *Donald S. Magill, Vice President*

TOM TAUCHE, INC. A Colorado corporation

By: *Tom Tauche, President*  
Tom Tauche, President

