

**ORDINANCE 2005-29**  
**FIRST AMENDMENT TO AGREEMENT RELATING TO THE**  
**ANNEXATION OF PROPERTY KNOWN AS VISTA VALLEY PUD**  
**TO THE CITY OF FRUITA, COLORADO**

THIS FIRST AMENDMENT is entered into this 6<sup>th</sup> day of September, 2005, by and between the CITY OF FRUITA, COLORADO, a Colorado municipal corporation, whose address is 325 East Aspen, #155, Fruita, CO 81521 (the "City"), and VISTA VALLEY II, LLC, a Colorado limited liability company, whose address is \_\_\_\_\_, (the "Developer").

RECITALS:

A. WHEREAS, on May 7, 2002, the City Council of the City of Fruita adopted Ordinance No. 2002-09, annexing to the City of Fruita certain real property contiguous thereto known as the Vista Valley II Annexation; and

B. WHEREAS, Ordinance No. 2002-09 approved an agreement relating to the annexation of property known as Vista Valley PUD to the City of Fruita, Colorado, entered into by and between the City of Fruita and John R. Fish, James H. Fish and Paula G. Ragan, recorded at Page 506 of Book 3168 of the records of the Mesa County Clerk and Recorder ("Annexation Agreement"); and

C. WHEREAS, Vista Valley II, LLC is the successor in interest of John R. Fish, James H. Fish and Paula G. Ragan in regard to the rights and obligations of said Annexation Agreement; and

D. WHEREAS, pursuant to subsection 8.1 of the Annexation Agreement, Developer conveyed to the City for use by the general public for park, recreation, and other purposes a tract of land containing approximately 3 acres known as Olga Anson Memorial Park; and

E. WHEREAS, pursuant to subsection 8.2 of the Annexation Agreement, Developer constructed park improvements pursuant to a park improvement plan approved by the City; and

F. WHEREAS, pursuant to subsection 8.3 of the Annexation Agreement, the Developer or a homeowners association created by the Developer was required to maintain the public park above described for a period of two (2) years following the date the City accepts the park improvements constructed by the Developer; and

G. WHEREAS, the Developer believes that the City of Fruita is better equipped to properly maintain the public park and the City of Fruita is willing to assume responsibility for maintaining the subject public park for the initial two (2) year period in lieu of the Developer or a homeowners association in consideration of a payment to compensate the City for the cost of maintaining the park.

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

Section 1. That subsection 8.3 of the Annexation Agreement recorded at Page 507 of Book 3168 of the records of the Mesa County Clerk and Recorder is hereby amended to read as follows:

8.3 Maintenance of Public Park. In consideration of the payment of the sum of \$110,000.00, the City shall maintain the public park described in subsection 8.1 in accordance with a maintenance plan approved by the City, commencing October 6, 2005. As of that date, the Developer and homeowners association shall have no further responsibility for such maintenance. The Developer shall pay to the City the sum described above on or before October 6, 2005.

Section 2. Developer agrees that the provisions and requirements of this First Amendment are entered into with full knowledge, free will and without duress.

Section 3. This Agreement shall be recorded in the records of the Mesa County Clerk and Recorder, and upon recording shall be deemed a covenant running with the land.

Section 4. This First Amendment contains all of the understandings, conditions, and agreements between the parties relating to the maintenance of the public park known as Olga Anson Memorial Park at this time, and no other prior or current representations, oral or written, shall be effective or binding upon the parties.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed on the day and year first above written.

CITY OF FRUITA, COLORADO, a  
municipal corporation acting by and through  
its City Council.

By: \_\_\_\_\_  
E. James Adams, Mayor

ATTEST:

\_\_\_\_\_  
Margaret Steelman, City Clerk

VISTA VALLEY II, LLC, a Colorado limited liability company.

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

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF MESA             )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by E. James Adams and Margaret Steelman, as Mayor and City Clerk, respectively, of the City of Fruita, Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: \_\_\_\_\_  
Notary Public

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF MESA             )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_ for Vista Valley II, LLC.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: \_\_\_\_\_  
Notary Public