

## INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of the 28 day of April, 1994, between PARK MEADOWS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision organized and existing under the Constitution and laws of the State of Colorado (the "District"), and DOUGLAS COUNTY, COLORADO, a political subdivision of the State of Colorado (the "County").

### Recitals

A. The District is a quasi-municipal corporation and political subdivision organized and existing under the Constitution and laws of the State of Colorado. The District is authorized and empowered to provide various services to the owners and occupants of real property located within the geographical boundaries of the District pursuant to the "Service Plan for Park Meadows Metropolitan District" dated December 1981, which was prepared by Meurer & Associates, Inc., and Hanifen, Imhoff, Inc. (the "Service Plan"). The real property presently located within the geographical boundaries of the District is depicted on Exhibit A attached hereto (the "District Property").

B. The County is a political subdivision of the State of Colorado. The District Property is located entirely within the County. The County approved the Service Plan when it was first enacted, and any amendments to the Service Plan must be approved by the County in accordance with applicable law.

C. Trizec Colorado, Inc. ("Trizec") is the owner of certain real property, comprising approximately 102 acres, located within the geographical boundaries of the District (the "Developer Property"). Trizec has proposed that it may, through its affiliate, Park Meadows Mall, Ltd. ("PMM"), construct on the Developer Property a major regional shopping center and related improvements (the "Shopping Center"). Trizec and PMM are sometimes collectively referred to in this Agreement as the "Developer."

D. Certain of the improvements to be constructed as part of the development of the Shopping Center will be for the general use and benefit of the public, and are improvements that the District would otherwise be authorized to construct pursuant to the Service Plan (the "Public Improvements").

E. The Developer previously advised the District that it was a condition to the Developer's willingness and financial ability to proceed with the Shopping Center that a portion of the costs associated with the Public Improvements be paid with funds of the District, which funds were to be raised by the District through the issuance and sale of District bonds. An election was held in

the District in November 1993, at which the District submitted to the voters in the District a proposal for the issuance of bonds in order to finance, among other things, the costs associated with the Public Improvements. The voters in the District rejected this proposal.

F. The County recognizes that development of the Shopping Center would be of great benefit to the County and its residents. Therefore, the County has indicated to the Developer its willingness to be involved with the financing of the Public Improvements through the development and utilization of an appropriate financing vehicle or mechanism that will not directly involve the District (the "Financing Mechanism"). The precise form of the Financing Mechanism is subject to further discussion and consideration by the County and the Developer.

G. The District and the County both recognize and agree that development of the Shopping Center would also be of great benefit to the District and the owners and occupants of property located within the District, for at least the following reasons:

1. At least a portion of the Public Improvements will consist of improvements that the District would otherwise be authorized to finance and construct pursuant to the Service Plan; and

2. The development and future existence of the Shopping Center within the District will greatly increase the valuation of the property on which the Shopping Center is to be developed, thereby substantially enhancing the property tax revenues available to the District.

H. The Developer has indicated that its willingness and ability to proceed with the development of the Shopping Center may be contingent upon (1) the utilization of the Financing Mechanism for financing the Public Improvements, and (2) the Developer receiving assurances that the benefits accruing to the District from the development of the Shopping Center and its inclusion in the District will be used to reduce the future financial burdens that will be imposed upon the District Property, including the Developer Property.

I. The County is willing to pursue creation of the Financing Mechanism and to be involved with the financing of the Public Improvements only if the benefits to the District from the Shopping Center are used by the District to reduce the future financial burdens on the District Property, and only if the increase in the tax base and the reduction in the infrastructure obligations of the District that will result from the Shopping Center are not utilized by the District as a basis or justification for expanding the District Property (except as contemplated herein), expanding the types of services to be provided by the District, or otherwise increasing the financial burdens imposed on the District Property or any part thereof.

J. The District, recognizing the substantial benefits that will result from the construction of the Shopping Center, is willing to enter into this Agreement with the County (which shall also be for the benefit of the Developer), whereby it will agree to act in accordance with the foregoing objectives and intentions of the County and the Developer.

K. This Intergovernmental Agreement is permitted by the statutes, ordinances and other laws applicable to the District and to the County, and is expressly authorized by the provisions of §29-1-201, et seq., Colorado Revised Statutes, as amended, pertaining to "Intergovernmental Relationships."

### **Agreement**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the County hereby agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into and made a part of this Agreement. The parties acknowledge that the Recitals accurately set forth their understandings and intentions with respect to the development of the Shopping Center and the financing of the Public Improvements.

2. Financing Mechanism. The County agrees that it will continue its discussions with the Developer concerning the Financing Mechanism and that it will, if the County and the Developer are able to agree upon the nature of the Financing Mechanism and the extent and nature of the financing to be provided thereby, utilize the Financing Mechanism in connection with the construction of the Public Improvements. If the County and the Developer do not agree upon the nature of the Financing Mechanism and the extent and nature of the Financing to be provided thereby on or before December 31, 1995 (unless such date is extended by mutual agreement of the District and the County), this Agreement shall terminate and be of no further force or effect.

3. Intentions of District. The County's agreement to pursue the Financing Mechanism is based upon certain expectations of the County with respect to the future actions of the District if the Shopping Center is constructed. These expectations are based upon the following statements of intention of the District:

(a) If the Shopping Center is constructed, the County expects, and the District hereby states its intention, that the increased revenues of the District that will be generated by the Shopping Center shall be used by the District only for the purposes of repaying any presently existing indebtedness of the District and constructing the remaining infrastructure that the District is authorized to construct under the present terms of the Service Plan; provided,

however, that nothing in this Agreement shall preclude the District from utilizing its revenues for the purpose of operating and/or maintaining its facilities and otherwise carrying out its obligations to owners and occupants of the District Property in accordance with the present terms of the Service Plan.

(b) If the Shopping Center is constructed, the County expects, and the District hereby states its intention, that the District will not (i) add additional property to the District or expand the boundaries of the District Property, except that the foregoing shall not prevent the District from including within the District Property additional properties that will not increase the financial burdens imposed on the District or its landowners or occupants in any material respect, and the inclusion of which will be of demonstrable benefit to the District; (ii) increase or expand its powers or obligations beyond those presently set forth in the Service Plan in any material respect; or (iii) undertake, agree or commit in any manner to provide or pay for improvements beyond the improvements presently contemplated by the Service Plan; provided, however, that such improvements may be subject to reasonable adjustment in configuration and/or specification so long as the cost thereof is not changed in any material respect.

(c) If the Shopping Center is constructed, the County expects, and the District hereby states its intention, that at such time as the presently existing indebtedness of the District has been repaid (or adequate provision has been made for repayment) and the improvements now existing and otherwise authorized under the present terms of the Service Plan (unless any of the same are abandoned after the date hereof) have been constructed, paid for and dedicated or otherwise turned over for maintenance and operation to the County or other appropriate entities, the District will be dissolved.

These expectations and statements of intention are based upon the acknowledgment of the District and the County that the Shopping Center will relieve the District of certain future costs of constructing improvements and will enhance the tax base in the District, and upon the mutual acknowledgment of the District and the County that these benefits should be utilized by the District in a manner so as to reduce the future tax burdens on landowners and occupants within the District. Accordingly, the parties acknowledge that, although each shall retain its powers and authority as an independent governmental entity, these expectations and statements of intention are intended to guide and direct the actions and policies of each with respect to the matters addressed herein, and further that, but for the formal statement of these expectations and intentions, the County would not pursue creation and utilization of the Financing Mechanism for the construction of the Public Improvements and the Developer would not pursue development of the Shopping Center. Further, the Board of

Directors of the District and the Board of County Commissioners of the County wish, by means of this Agreement, to inform future members of each respective board of their expectations and intentions with respect to the matters addressed herein, with the intention of guiding and directing the actions of such respective future boards accordingly.

4. Enforcement. The parties intend that the expectations of the County, and the intentions of the District, as stated in Section 3 of this Agreement, shall be enforced and implemented to the greatest extent permitted by law. Without limiting the foregoing, the parties understand and expect that the County will be guided by, and will conform with, this Agreement in making any future determinations with respect to the District or the Service Plan and will otherwise attempt, in good faith, with due diligence and using whatever means may be legal and reasonable, to insure that the expectations and intentions stated above are carried out as so stated.

5. Developer as Beneficiary. In the event that the Developer and the County are able to agree upon and implement a Financing Mechanism, and the Shopping Center is constructed, the Developer will expend very substantial funds in order to construct the Shopping Center. In addition, the Financing Mechanism may require that proceeds or revenues from the Shopping Center or the Developer Property be utilized in connection therewith. Accordingly, the Developer may be largely responsible for the benefits to be realized by the District as a result of the construction of the Shopping Center and the Public Improvements. Therefore, the parties acknowledge that it is appropriate, and do hereby agree, that the Developer shall be an intended third party beneficiary of this Agreement and shall be entitled to enforce this Agreement to the greatest extent permissible, and by whatever means may be allowable, under applicable law.

6. Notices. Any notice required or permitted to be given by either party under this Agreement shall be in writing and will be deemed given (a) upon personal delivery or upon transmission by telecopier or similar facsimile transmission device, (b) on the first business day after receipted delivery to a courier service which guarantees next-business-day delivery, or (c) on the third business day after mailing, by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

If to the District:

Park Meadows Metropolitan District  
c/o R. S. Wells Corporation  
Carrara Place  
6200 South Syracuse Way, Suite 150  
Englewood, Colorado 80111  
Attention: District Manager  
Telecopy No: (303) 773-2050

If to the County:

Douglas County, Colorado  
101 3rd Street  
Castle Rock, Colorado 80104  
Attention: County Manager  
Telecopy No: (303) 688-1293

In either case, with copies to:

The Hahn Company  
4350 La Jolla Village Drive  
Suite 700  
San Diego, California 92122-1233  
Attention: Real Estate/Legal  
Telecopy No: (619) 546-3413

Any party may change such party's address for notices or copies of notices by giving notice to the other parties in accordance with this Section.

7. Miscellaneous.

(a) No provision or term of this Agreement may be amended, modified, revoked, supplemented, waived or otherwise changed except by a written instrument duly executed by the County and the District and consented to by the Developer.

(b) Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law. Should any provision, covenant, agreement or undertaking contained herein be deemed invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

(c) The parties agree to execute any and all additional documents that may reasonably be required to evidence or carry out the intentions, expectations, agreements and undertakings set forth in this Agreement.

(d) Each party represents to the other that it has full power and authority to enter into and perform this Agreement, that it has duly and properly taken all requisite actions to the execution and performance hereof, and that this Agreement is binding and enforceable in accordance with its terms.

(e) This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(f) No failure or delay on the part of either party in exercising any right, power or remedy hereunder shall

operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

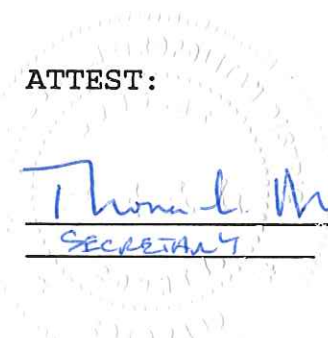
(g) This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Colorado.

(h) All Exhibits attached hereto are made a part hereof.

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

PARK MEADOWS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision organized and existing under the Constitution and laws of the State of Colorado

ATTEST:

  
Thomas L. Moran  
SECRETARY

By: [Signature]  
Title: \_\_\_\_\_

DOUGLAS COUNTY, COLORADO, a political subdivision of the State of Colorado

ATTEST:

Reta A. Crain  
Reta A. Crain,  
Clerk and Recorder

By: M. Michael Cooke  
M. Michael Cooke  
Chair, Board of County  
Commissioners

APPROVED AS TO CONTENT:

[Signature] 4/28/94  
Michael D. Maag, County Manager

APPROVED AS TO FORM:

J. Mark Hannen 7/25/94  
J. Mark Hannen, County Attorney

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of April, 1994 by Lee B. Van Ranshert, as PRESIDENT, and Thomas L. Monson, as Secretary, of Park Meadows Metropolitan District.

Witness my hand and official seal.

My commission expires: March 25, 1995

Elizabeth A. Blain  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of April, 1994 by M. Michael Cooke, as Chair of the Board of County Commissioners, and by Reta A. Crain, as Clerk and Recorder of Douglas County, Colorado.

Witness my hand and official seal.

My commission expires: My Commission Expires 12-6-94

Carol A. Acker  
Notary Public  
Carol A. Acker  
101 Third Street  
Castle Rock, CO 80104



EXHIBIT "A"

DISTRICT PROPERTY

