

**DRAFT**

**AGREEMENT REGARDING**  
**SHARING OF**  
**"MESA SERVICES COSTS"**

**This Agreement regarding the sharing of "Mesa Services Costs" (Agreement) is entered into by and among Garden of the Gods Club LLC (GOTGC) and Kissing Camels Property Owners Association (KCPOA). This Agreement shall be legally binding upon the Parties and their grantees, successors and assigns.**

**WITNESSETH**

**WHEREAS, for many years prior to 2007, KCPOA functioned as a homeowner association for areas within Kissing Camels Estates (KCE), and Hill Development Company (HDC) functioned as the owner and developer of various properties and operations within KCE; and**

**WHEREAS, prior to 2007, KCPOA and HDC were each responsible for managing and maintaining various operations and functions within KCE and immediately adjacent thereto (on Mesa Road); and**

**WHEREAS, prior to 2007, KCPOA and HDC had a business practice of sharing the operational costs of certain of those operations and functions which, as a group, were known as "Mesa Services Costs"; and**

**WHEREAS, "Mesa Services Costs" were (and are) composed of the four major tasks (with each major task having several sub-tasks or responsibilities) listed in Attachment A hereto; and**

**WHEREAS, according to their business practice, both KCPOA and HDC performed some work in each major task area, and as part of that business practice, would reimburse each other on a monthly basis, so that, on an annual basis, KCPOA would bear approximately fifty-**

**eight (58%) percent of the total Mesa Services Costs, and, HDC would bear approximately forty-two (42%) percent of such Mesa Services Costs; and**

**WHEREAS, in early 2007, GOTGC acquired the interests of HDC in certain properties and operations located within KCE and adjacent thereto, specifically those properties and operations related to the Mesa Services Costs; and**

**WHEREAS, from early 2007 until the present, GOTGC and KCPOA have adopted and continued the business practice that existed between KCPOA and HDC regarding the performance of such work, and the sharing of such Mesa Services Costs in the same 58%/42% ratio described above; and**

**WHEREAS, it is the intent of the Parties, and the purpose of this Agreement, to continue such business practice regarding Mesa Services Costs, but to do so in a more efficient and well-managed division of the performance of such work tasks, while maintaining the same overall 58%/42% ratio described above.**

**NOW THEREFORE, for and in consideration of the mutual covenants and promises hereafter set forth and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto do hereby mutually covenant and agree as follows:**

- 1. Effective Date. The Effective Date of this Agreement shall be the date upon which the last Party executes this Agreement.**
- 2. Term. The Term of this Agreement shall be five (5) years following the Effective Date.**
- 3. Performance of Work & Sharing of Mesa Services Costs. The Parties agree that, commencing upon a date to be mutually agreed (but no later than 30 days following the Effective Date), the Parties shall mutually abandon the prior business practice, and adopt a new arrangement for performing the work and sharing Mesa Services Costs that will still continue the sharing of costs in an approximate 58%/42%**

ratio. Under the new arrangement, the Parties shall perform the Mesa Services work tasks, and be responsible for the costs thereof, as generally outlined in Attachment B hereto. As reflected in such Attachment B, GOTGC shall be solely and exclusively responsible for performing the work and paying the costs of the three (3) major tasks titled: Mesa Road from North end of Club to south end of Cathedral Ridge, Kissing Camels Drive from Mesa Rd. to Rec Ctr., and Recreation Center. And, KCPOA shall be solely and exclusively responsible for performing the work and paying the costs of the one (1) major task titled: Security. The work and cost-bearing responsibility of each Party shall include the sub-tasks and responsibilities listed under the major tasks set forth in Attachment B. Under this new and more efficient arrangement, neither Party shall be required to reimburse the other for costs of performing the major tasks, sub-tasks or responsibilities assigned to the other Party. The dollar figures reflected in Attachment B are merely representative, since they reflect the approximate total expenditures for those tasks for calendar year 2010. Each Party is expected to expend those operational costs necessary to properly perform the relevant major work tasks, sub-tasks and responsibilities in future years, regardless of specific actual costs for any given year. The Parties agree that this Agreement addresses all operational costs, and, that each Party also shall be responsible for capital costs related to its assigned major work task(s) without contribution from the other Party. The Parties agree, however, to engage in pre-notification and consultation in advance of major capital projects and costs. As regards the major task titled "Security" (which is to be performed by KCPOA), the parties agree that some of the sub-tasks and responsibilities currently being performed by the Security Contractor pertain solely to the properties and/or interests of GOTGC, and are not mutually beneficial to both parties as are most of the costs addressed by this Agreement. For that reason the parties agree that GOTGC shall pay to KCPOA an amount, to be reviewed and estimated on an annual basis, to reimburse KCPOA for such costs that solely benefit GOTGC. For the year 2012, the parties agree that the amount of such reimbursement shall be Thirty-two Thousand (\$32,000) Dollars, to be paid within sixty (60) days following the Effective Date of this Agreement.

**4. Standards of Performance. In performing its work as assigned pursuant to Paragraph 3 above, each Party shall perform such work in a manner to meet the following performance standards:**

**a. General Standards. The Party responsible for work under each of the four major tasks, and the related sub-tasks and responsibilities for each, shall generally maintain a quality and quantity of work performance that is no lower than the quality and quantity of such work as being performed for each such task for the year 2011.**

**b. Failure to Meet Standards or Abandonment of Function**

**Should either Party, in its performance of one of its assigned major tasks, fail to meet the General Standards of Performance set forth above, the other Party shall be entitled to activate Disputes clause proceedings in accordance with the Disputes Clause in Paragraph 7 of this Agreement.**

**5. Operation of Recreation Center.**

**a. GOTGC agrees that the Recreation Center in KCE shall be open and available not only to members of the Garden of the God Club, but also to all residents of KCE who are not members of the Garden of the Gods Club. Such residents of KCE shall have the same rights and privileges as members of the Garden of the Gods Club.**

**b. Should GOTGC sell or abandon the Recreation Center, the Parties shall revert to the prior business practice of sharing all Mesa Services Costs for all the other remaining major tasks on the basis of the 58%/42% ratio described above, until or unless mutually agreed otherwise.**

**6. Responsibility for Damage. If either Party, in the performance of its work tasks hereunder, or otherwise, should cause damage to the property or function or operation of the other Party, then the Party**

causing such damage shall pay to the damaged Party the full costs of restoring such property, function or operation. (Examples of such damage might be damage caused to GOTGC irrigation system by KCPOA maintenance equipment, or, damage to KCPOA roads by faulty GOTGC irrigation system).

7. **Disputes.** In the event either Party, or its successors or assigns, should allege a breach of this Agreement by the other Party, or, if either Party or its successors or assigns should fail to agree on compliance with or implementation or interpretation of any part of this Agreement, such alleged breach or failure to agree shall be treated as a Dispute and handled pursuant to this clause. The Parties agree not to initiate litigation unless and until the steps outlined below have been exhausted without resolution of the dispute. The Party alleging breach or failure to agree shall activate this Disputes clause by providing a written Notice of Dispute to the other Party. Within seven (7) days of the delivery of such Notice, the Parties shall hold discussions at the senior management level in a good faith attempt to resolve the dispute. If the dispute remains unresolved twenty (20) days following the delivery of such Notice, the Parties shall participate in mediation, using a mediator that is acceptable to both sides. In the event the Parties cannot agree upon a mediator, the mediator shall be designated by the President of the Council of Neighbors and Organizations (CONO) in Colorado Springs, but, in any event, within thirty (30) days following the delivery of the Notice of Dispute. Mediation shall commence upon a date mutually agreed by the Parties, or if no agreement, then a date selected by the President of CONO. Mediation shall be deemed to have failed if so declared by the mediator, or, if the dispute is not resolved within twenty (20) days of commencing mediation. If legal issues are involved in the dispute, the Law of the State of Colorado shall be the applicable law used to interpret or implement this Agreement. Should any dispute remain unresolved for any reason after the passage of seventy-five (75) days following the delivery of the Notice of Dispute, either Party shall, thereafter, be free to pursue any remedies available at law or in equity.

8. **Miscellaneous:**

- a. **Partial Invalidity.** If in any instance any provision of this Agreement shall be held invalid or unenforceable under any applicable law it shall be replaced by an enforceable

provision to the same or the nearest possible equivalent effect. In the event there is no enforceable provision to the equivalent effect, such provision shall not apply in such instance. In such event, the remaining provisions shall be given effect in accordance with their terms.

- b. **Entire Agreement/Modification.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written agreements, communications and negotiations between the Parties with respect to the subject matter. This Agreement shall not be revised or modified except by written agreement executed by the Parties.
- c. **Time is of the Essence.** Time is of the essence with respect to each and every covenant, term and condition provided herein.
- d. **Duplicate Originals.** The Parties agree that this Agreement shall be executed in duplicate originals.
- e. **Capitalized Terms.** Any capitalized term not defined in this Agreement shall have the same meaning as set forth in the Master Declaration.

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[End of Agreement]

**Executed by:**

**GOTGC:**

Garden of the Gods Club, LLC

By: Tirk Gooden

Title: Pres

Date: 4/4/12

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

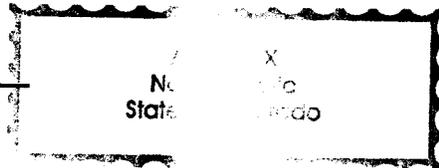
The foregoing Agreement Regarding Mesa Services Costs was acknowledged before me this 5 day of APRIL, 2012, by DARK GOSDA, as \_\_\_\_\_ of \_\_\_\_\_, a Colorado

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[SEAL]

[Signature]  
\_\_\_\_\_  
Notary Public



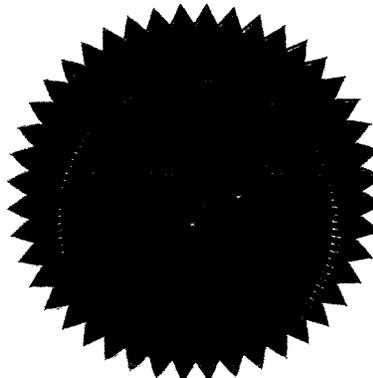
KCPOA:

Kissing Camels Property Owners Association, Inc.

By: [Signature]

Title: President

Date: 4/4/12



STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

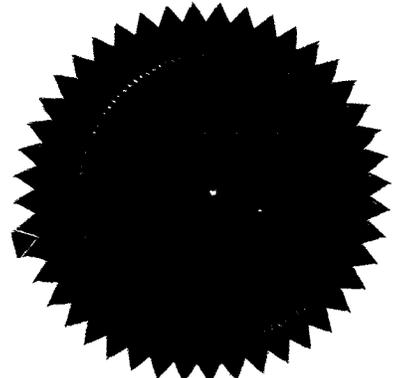
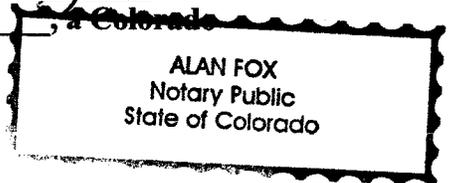
The foregoing Agreement Regarding Mesa Services Costs was acknowledged before me this 5 day of APRIL, 2012, by CHARLES JONES, as \_\_\_\_\_ of \_\_\_\_\_, a Colorado

Witness my hand and official seal.

My commission expires: My Commission Expires 10/2013

[SEAL]

[Signature]  
\_\_\_\_\_  
Notary Public



## ATTACHMENT A

KCPOA/Garden of the Gods Club LLC  
 Mesa Services Restructure  
 January 19, 2012

Task	2010 Original Mesa Services		
	KCPOA	GGC	Total
<b>Mesa Road from North end of Club to south end of Cathedral Ridge</b>			
Median, Parkway Landscaping and Irrigation	\$ 24,935	\$ 18,056	\$ 42,991
Summer Flowers	\$ 14,894	\$ 10,786	\$ 25,680
<b>Annual Total</b>	<b>\$ 39,829</b>	<b>\$ 28,842</b>	<b>\$ 68,671</b>
<b>Kissing Camels Drive from Mesa Rd. to Rec Ctr.</b>			
Landscaping & Irrigation	\$ 10,686	\$ 7,738	\$ 18,425
Snowplowing	\$ 290	\$ 210	\$ 500
<b>Annual Total</b>	<b>\$ 10,976</b>	<b>\$ 7,948</b>	<b>\$ 18,925</b>
<b>Security</b>			
Security	\$ 217,002	\$ 157,574	\$ 374,576
<b>Annual Total</b>	<b>\$ 217,002</b>	<b>\$ 157,574</b>	<b>\$ 374,576</b>
<b>Recreation Center</b>			
Net Operating Loss	\$ 98,442	\$ 71,286	\$ 169,728
<b>Annual Total</b>	<b>\$ 98,442</b>	<b>\$ 71,286</b>	<b>\$ 169,728</b>
<b>Grand Total</b>	<b>\$ 366,250</b>	<b>\$ 265,650</b>	<b>\$ 631,900</b>
	58%	42%	

## ATTACHMENT B

KCPOA/Garden of the Gods Club LLC  
 Mesa Services Restructure  
 January 19, 2012

Task	2010 Restructured Mesa Services		
	KCPOA	GGC	Total
<b>Mesa Road from North end of Club to south end of Cathedral Ridge</b>			
Median, Parkway Landscaping and Irrigation	\$ -	\$ 42,991	\$ 42,991
Summer Flowers	\$ -	\$ 25,680	\$ 25,680
<b>Annual Total</b>	<b>\$ -</b>	<b>\$ 68,671</b>	<b>\$ 68,671</b>
<b>Kissing Camels Drive from Mesa Rd. to Rec Ctr.</b>			
Landscaping & Irrigation		\$ 18,425	\$ 18,425
Snowplowing		\$ 500	\$ 500
<b>Annual Total</b>	<b>\$ -</b>	<b>\$ 18,925</b>	<b>\$ 18,925</b>
<b>Security</b>			
Security	\$ 374,576	\$ -	\$ 374,576
<b>Annual Total</b>	<b>\$ 374,576</b>	<b>\$ -</b>	<b>\$ 374,576</b>
<b>Recreation Center</b>			
Net Operating Loss	\$ -	\$ 169,728	\$ 169,728
<b>Annual Total</b>	<b>\$ -</b>	<b>\$ 169,728</b>	<b>\$ 169,728</b>
<b>Grand Total</b>	<b>\$ 374,576</b>	<b>\$ 257,324</b>	<b>\$ 631,900</b>
	59%	41%	