

Agreement in Principle Public Recreational Pool Facility

December 16, 2008

Greenbrier Valley Physical Therapy, L.L.C. (“GVPT”) proposes a private/public partnership between GVPT and the Greenbrier County Commission (“Commission”), to facilitate our mutual goal of an indoor swimming facility (the “Project”) for use by the citizens and visitors of Greenbrier County. It is important that we memorialize a formal commitment and agreement to the basic principles of the project to enable securing the real property necessary for the Project to succeed and to provide substantial assurance to the citizens that the Project is in progress.

1. Offer and Consideration. To this end, GVPT is pleased to offer up to 3.5 acres to the Commission for a purchase price of \$135,000 per acre for the construction of a public recreational pool facility that will be managed by GVPT under long-term contract.
2. Project Structure. The Project will be structured with the Commission owning all real property on which Public Funds will be expended, plus access and/or long-term lease for adequate parking space and appropriate rights of way for ingress and egress necessary for the operation of the Project as a standalone basis. Concurrent with completion of the construction anticipated by the Project, the Commission will execute a long-term lease/management contract whereby GVPT will manage all operations of the Project, including but not limited to personnel, programs, program revenues and expense administration.
3. Financing. The Project is contingent upon the Commission providing all funding for the real property acquisition and construction of all improvements incident to the Project until a state of completion and Certificate of Occupancy is obtained.
4. Due Diligence. The Commission and GVPT will cooperate, and cause each others’ representatives to cooperate, with continuing due diligence review and shall supply the Commission and its representatives and GVPT and its representatives with such information, materials and documents, and such access to its operations and personnel, as is reasonably requested in connection therewith.
5. Definitive Agreement.
 - (a) The Commission and GVPT shall proceed in good faith to complete the documentation of a definitive agreement relating to the Project (the “Definitive Agreement”). The Definitive Agreement will contain, among other things, usual and customary representations and warranties. Each party agrees that it will use its commercially reasonable efforts to arrive at a mutually acceptable Definitive Agreement for approval, execution and delivery on or before _____, but in all events prior to June 30, 2009.
 - (b) The Definitive Agreement will include these basic principles:
 - (i) A public/private indoor pool facility will be constructed adjacent to GVPT. The projected cost is approximately \$4 million and no more than \$5 million dollars;

(ii) Commission will purchase the land, build the pool complex, lease and enter into in a Management Agreement with GVPT to operate as part of the GVPT fitness facility. A long term lease is preferred. The terms of the Management Agreement should be reviewed within three years and modified as necessary. Commission will own the facility and GVPT will serve as contracted management (public/private venture).

(iii) Facility will be open to the public through memberships or daily rates.

(iv) The facility will include a junior Olympic competition/lap pool as well as a recreation pool with a zero entry section with interactive water features for children and a senior soaking/aerobic area to meet the needs of all age groups and interests. Locker rooms, childcare and limited administrative space will be included. Total space is estimated to be 18,000-20,000 sf.

(v) Facility shall be designed so that it can be managed by a separate entity in the event the lease/management agreement with GVPT is terminated.

(vi) Annual debt service for the Project shall not require an annual amount in excess of \$450,000 of the Greenbrier county Hotel-Motel tax revenue, which should permit continued funding for other arts and recreation ventures throughout the county at the discretion of the Commission.

(vii) Upon creation by the Commission of a county recreation coordinator, the Project shall be a component included with other facilities throughout the county for the comprehensive management and development of various leagues, programs, events and tournaments.

(viii) GVPT will assess and administer operating revenue attributable to the Project, disburse direct operating expenses and provide quarterly reports satisfactory to the Commission.

(ix) The Commission and GVPT shall have shared loss exposure at a 75%-25% ratio for operating losses. There is no guarantee the facility will be profitable, but GVPT will not be paid or reimbursed for services or contributions of existing staff unless the facility is profitable.

(c) Upon execution of such Definitive Agreement, the parties will use commercially reasonable efforts to effect the closing and to proceed with the Project in accordance with the Definitive Agreement, as promptly as is reasonably practicable.

6. Confidentiality. GVPT hereby consents that this Agreement and any information and materials provided to Commission in connection with the Project (including due diligence materials) shall be governed by the West Virginia Freedom of Information Act and available for public inspection without notice to GVPT.

7. Non-assignable. You, individually, and GVPT agree that, from the date that this Agreement is countersigned by the Commission until execution of the Definitive Agreement, neither you nor GVPT shall assign the Deposit or this Agreement to any third party.

8. Termination. Commission will have the right to terminate this Agreement upon breach of this Agreement by GVPT, in which case the Deposit will be returned to Commission. GVPT will have the right to terminate this agreement if the Definitive Agreement has not been consummated by June 30, 2009, in which case the parties will be released from their obligations with respect to the Project and the Deposit will be released to GVPT. For avoidance of doubt, if the failure to complete the Definitive Agreement by such date results from Commission's failure to sign the Definitive Agreement, the Deposit will be released to GVPT.

9. Governing Law. This letter shall be governed by, and construed in accordance with, the internal laws of the State of West Virginia.

This Agreement is intended to constitute a binding obligation of the undersigned parties to proceed with the Project in accordance herewith. This Agreement shall not be amended, modified or waived by the express or implied conduct of the parties, except by written agreement signed by the parties, expressly amending, modifying or waiving this letter or any provision hereof.

We look forward to moving ahead on the proposed Project.

ACCEPTED:

Greenbrier Valley Physical Therapy, LLC
111 Davis Stuart Road
Ronceverte, WV 24970

By: _____
Name: Kevin A. Workman
Title: Member

Kevin A. Workman

Accepted:

Greenbrier County Commission

By _____
Name: Lowell C. Rose
Commissioner
Voting In Favor Against

By _____
Name: Betty D. Crookshanks
Commissioner
Voting In Favor Against

By _____
Name: Bradley W. Tuckwiller
Commissioner
Voting In Favor Against