



1000 Englewood Pkwy – Council Chambers
Englewood, CO 80110

AGENDA

Regular City Council Meeting
Monday, March 14, 2016 ♦7:30 p.m.

1. Call to Order.
2. Invocation.
3. Pledge of Allegiance.
4. Roll Call.
5. Consideration of Minutes of Previous Session.
 - a. Minutes from the Regular City Council Meeting of Feb. 16, 2016.
6. Recognition of Scheduled Public Comment. The deadline to sign up to speak for Scheduled Public Comment is Wednesday, prior to the meeting, through the City Manager's Office. Only those who meet the deadline can speak in this section. (This is an opportunity for the public to address City Council. There is an expectation that the presentation will be conducted in a respectful manner. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)
 - a. Sarah L. Hughes from U.S. Small Business Administration - Colorado District Office will discuss the Emerging Leaders Program
 - b. David Prado, Englewood resident, will address Council regarding City Ditch.
 - c. Elaine Hults, Englewood resident, will address Council regarding boards and foundations.
 - d. Doug Cohn, Englewood resident, will address Council regarding historic preservation.
 - e. Leila Phillips, Englewood resident, will address Council regarding Belleview/Brookridge Comprehensive Plan area.
7. Recognition of Unscheduled Public Comment. Speakers must sign up for Unscheduled Public Comment at the beginning of the meeting. (This is an opportunity for the public to address City Council. There is an expectation that the presentation will be conducted in a respectful manner. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to three minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)

Council Response to Public Comment.

8. Communications, Proclamations, and Appointments.
 - a. A proclamation declaring March National Nutrition Month in Englewood.
 - b. A resolution appointing Stacie Flynn from an alternate to a regular seat on the Board of Adjustment and Appeals.
 - c. Public unveiling of OpenEnglewood Financial Portal. **Staff: City Manager Eric Keck**
9. Consent Agenda Items
 - a. Approval of Ordinances on First Reading.
 - i. Council Bill 16 - The Police Department is recommending that City Council adopt a bill for an ordinance authorizing the Englewood Police Department to accept funding from the U.S. Department of Justice - Office of Justice Programs - Bulletproof Vest Partnership / Body Armor Safety Initiative which will assist the Police Department with the purchase of bulletproof vests. **Staff: Cmdr. Gary Condrey**
 - b. Approval of Ordinances on Second Reading.
 - i. Council Bill 8 - Approve a bill for an ordinance, on second reading, approving the Brew on Broadway's paseo lease renewal for a portion of the City-owned property at 3499 South Broadway. **Staff : Economic Development Manager Darren Hollingsworth**
 - ii. Council Bill 9 - Approve a bill for an ordinance, on second reading, approving ZOMO's paseo lease agreement for a portion of the City-owned property at 3499 South Broadway. **Staff: Economic Development Manager Darren Hollingsworth**
 - iii. Council Bill 10 - Approve a bill for an ordinance, on second reading, authorizing the Second Amendment to the Intergovernmental Agreement between the City of Englewood and the Regional Transportation District (RTD) for cost sharing for operation of the Art Shuttle for 2016. **Staff: Senior Planner Harold Stitt**
 - c. Resolutions and Motions.
 - i. Utilities staff recommends Council approve a motion approving the Tele-Works invoice in the amount of \$55,729.00. **Staff: Utilities Director Tom Brennan**
10. Public Hearing Items.
11. Ordinances, Resolutions and Motions.

- a. Approval of Ordinances on First Reading.
 - i. Council Bill 11 - Staff recommends Council approve a bill for an ordinance approving that the Budget Advisory Committee's sunset provision be extended to 31 May 2017; that the Section 2-14-2 be amended to remove a Council liaison; and that the Powers and Duties section reflect the accompanying amendments to the ordinance. **Staff: City Manager Eric Keck**
 - ii. Council Bill 14 - Community Development Department recommends Council approve a bill for an ordinance approving an intergovernmental agreement with the US Small Business Administration (SBA) to co-sponsor the 2016 Emerging Leaders Program. **Staff: Economic Development Manager Darren Hollingsworth**
 - iii. Council Bill 13 - Public Works staff recommends Council approve a bill for an ordinance authorizing the vacation of a portion of the alley east of 3400 South Acoma Street and the acceptance of a Transportation and Utility easement for public access to South Acoma Street. **Staff: Deputy Public Works Director Dave Henderson**
 - iv. Council Bill 15 - The Utilities staff recommends Council approve a bill for an ordinance approving the Grant of Right of Way, Grant of Temporary Construction License and Exchange of Right of Way Agreement requested by KRF 965, LLC for construction of the Rite-Aid building. **Staff: Utilities Director Tom Brennan**
 - v. Council Bill 12 - EMRF recommends Council approve a bill for an ordinance, approving the lease of the EMRF property in PA 81 to Shea Properties d.b.a. Central Park at Highlands Ranch, LLC, with an option to purchase following a lease term of 20 years. **EMRF Board Member Michael Flaherty**
- b. Approval of Ordinances on Second Reading.
- c. Resolutions and Motions.
 - i. Community Development staff recommends Council approve, by motion, an agreement between the City of Englewood and MV Public Transportation, Inc. for 2016 management, operation, and maintenance of the art shuttle. The contract amount is \$266,834.00. **Staff: Senior Planner Harold Stitt**
 - ii. EMRF recommends Council approve a resolution supporting the EMRF to enter into a ground lease with MKS Residential, d.b.a. Solana Lucent Station, LLC, for the lease of 9.89 acres in Lot 4 in PA 85 owned by EMRF. **Staff: EMRF Board Member Michael Flaherty**
 - iii. EMRF recommends Council approve a resolution supporting the EMRF to exchange a 12.3 acre parcel of EMRF property in PA81 for a 12.3 acre adjacent parcel owned by Shea Properties d.b.a. Central Park at Highlands Ranch, LLC. **EMRF Board Member Michael Flaherty**

12. General Discussion.
 - a. Mayor's Choice.
 - i. Notice of a Special City Council Meeting on Monday, March 21, 2016, at 5:30 p.m. regarding an Executive Session on Standard Response Protocol.
 - ii. A motion to go into Executive Session to discuss a personnel matter pursuant to C.R.S. Section 24-6-402(4)(f)(I).
 - b. Council Members' Choice.
 - i. A motion approving Strategic Government Resources as the executive search firm for the City Attorney position.
13. City Manager's Report.
 - a. Consensus for a resolution of support for renewal of Scientific and Cultural Facilities District on next agenda.
14. City Attorney's Report.
 - a. Cuttin' It Loose Hair Salon Discussion
15. Adjournment.

**ENGLEWOOD CITY COUNCIL
ENGLEWOOD, ARAPAHOE COUNTY, COLORADO**

**Regular Session
February 16, 2016**

A permanent set of these minutes and the audio are maintained in the City Clerk's Office.
Minutes and streaming audios are also available on the web at:
<http://www.englewoodgov.org/inside-city-hall/city-council/agendas-and-minutes>

1. Call to Order

The regular meeting of the Englewood City Council was called to order by Mayor Jefferson at 7:40 p.m.

2. Invocation

The invocation was given by Council Member Russell.

3. Pledge of Allegiance

The Pledge of Allegiance was led by Council Member Russell.

4. Roll Call

Present: Council Members Jefferson, Olson, Barrentine, Gillit, Martinez, Russell, Yates
Absent: None

A quorum was present.

Also present: City Manager Keck
Acting City Attorney Comer
Deputy City Manager Flaherty
Assistant City Manager Robinson
City Clerk Ellis
Deputy City Clerk Carlile
Director Hargrove, Parks, Recreation and Library
Director Brennan, Utilities
Interim IT Manager Saifa-Bonsu
Economic Development Manager Hollingsworth, Community Development
Senior Planner Stitt, Community Development
Police Commander Englert
Open Space Manager Lee, Parks, Recreation and Library
Fleet Manager White, Public Works
Human Resources Manager Vega, Finance and Administrative Services
Human Resources Analyst Tayane
Human Resources Analyst Schell
Technical Support Specialist I Munnell, Information Technology

5. Consideration of Minutes of Previous Session

(a) **COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER YATES SECONDED, TO APPROVE THE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF FEBRUARY 1, 2016.**

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

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COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER MARTINEZ SECONDED, TO MOVE AGENDA ITEMS 8 (a) – 8 (cc) FORWARD.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

COUNCIL MEMBER YATES MOVED, AND COUNCIL MEMBER BARRENTINE SECONDED, TO APPROVE AGENDA ITEMS 8 (a) – 8 (cc).

(a) RESOLUTION NO. 41, SERIES OF 2016

A RESOLUTION APPOINTING DAVID PITTINOS TO THE PLANNING AND ZONING COMMISSION FOR THE CITY OF ENGLEWOOD, COLORADO.

(b) A proclamation declaring congratulations and appreciation for the 2016 Shen Yun show in Colorado, and recognize its artistic contribution to the people of Colorado.

(c) A certificate recognizing the reappointment of Joseph DeMoor to the Malley Center Trust Fund.

(d) A certificate recognizing the reappointment of Thomas Finn to the Board of Adjustments and Appeals.

(e) A certificate recognizing the reappointment of Angela Schmitz to the Board of Adjustments and Appeals.

(f) A certificate recognizing the reappointment of Mark Husbands to the Parks & Recreation Commission.

(g) A certificate recognizing the reappointment of Karen Miller to the Parks & Recreation Commission.

(h) A certificate recognizing the reappointment of Roger Mattingly to the Keep Englewood Beautiful Commission.

(i) A certificate recognizing the reappointment of Kristin Martin to the Keep Englewood Beautiful Commission.

(j) A certificate recognizing the reappointment of Thomas Burns to the Water and Sewer Board.

(k) A certificate recognizing the reappointment of Melissa Izzo to the Public Library Board.

(l) A certificate recognizing the reappointment of Catherine Townley to the Planning and Zoning Commission.

(m) A certificate recognizing the reappointment of Steve King to the Planning & Zoning Commission.

(n) A certificate recognizing the reappointment of James Phelps to the Non-Emergency Retirement Board.

(o) A certificate recognizing the appointment of Miguel Corral to the Alliance for Commerce in Englewood Committee.

(p) A certificate recognizing the appointment of Thomas Kruk to the Cultural Arts Commission.

(q) A certificate recognizing the appointment of Bryce Alexander to the Cultural Arts Commission.

(r) A certificate recognizing the appointment of Daniel Black as the youth member to the Cultural Arts Commission.

(s) A certificate recognizing the appointment of Andrew Keller to the Election Commission.

(t) A certificate recognizing the appointment of Caroline Godwin to the Keep Englewood Beautiful Commission.

(u) A certificate recognizing the appointment of Brett Kotal to the Keep Englewood Beautiful Commission.

(v) A certificate recognizing the appointment of Bethany Wilson to the Keep Englewood Beautiful Commission.

(w) A certificate recognizing the appointment of Steve Reiter to the Public Library Board.

(x) A certificate recognizing the appointment of William Dunlap to the Public Library Board.

(y) A certificate recognizing the appointment of Jessica Hall to the Public Library Board.

(z) A certificate recognizing the appointment of Naomi Lumban-Gaol as youth member to the Public Library Board.

(aa) A certificate recognizing the appointment of Jim Woodard to the Englewood Urban Renewal Authority.

(bb) A certificate recognizing the appointment of Paul Glista as alternate to the Englewood Urban Renewal Authority.

(cc) A certificate recognizing the appointment of Don Roth as alternate member to the Water and Sewer Board.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

Certificates were presented to the new appointees that were present.

6. Recognition of Scheduled Public Comment

(a) Elaine Hults, an Englewood resident, addressed Council regarding the Englewood Housing Authority.

(b) Doug Cohn, an Englewood resident, addressed Council regarding historic preservation.

(c) Jeremy Letkomiller, an Englewood resident, addressed Council regarding increasing safety concerns in north Englewood.

(d) Josh Painter addressed Council regarding the All Aboard Preschool.

7. Recognition of Unscheduled Public Comment

(a) Joe Riehl, an Englewood resident, addressed council regarding the closing of the preschool.

Council responded to Public Comment.

8. Communications, Proclamations and Appointments

AGENDA ITEMS 8 (a) THROUGH 8 (cc) WERE MOVED FORWARD. SEE PAGE 2.

9. Consent Agenda

(a) Approval of Ordinances on First Reading

There were no additional items submitted for approval on first reading. (See Agenda Item 11 (a).)

COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER OLSON SECONDED, TO APPROVE CONSENT AGENDA ITEMS 9 (b) (i), (ii), (iii) AND 9 (c) (i), (ii), (iii), (iv), (v).

(b) Approval of Ordinances on Second Reading

(i) ORDINANCE NO. 7, SERIES OF 2016 (COUNCIL BILL NO. 5, INTRODUCED BY COUNCIL MEMBER GILLIT)

AN ORDINANCE AUTHORIZING AN AMENDMENT TO AGREEMENT REGARDING CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR SOUTH PLATTE RIVER AT OXFORD AVENUE AGREEMENT NO. 11-07.25D BETWEEN THE CITY OF ENGLEWOOD, THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT, ARAPAHOE COUNTY, THE CITY OF SHERIDAN AND THE SOUTH SUBURBAN PARKS AND RECREATION DISTRICT REGARDING RIVERRUN TRAILHEAD.

(ii) ORDINANCE NO. 8, SERIES OF 2016 (COUNCIL BILL NO. 6, INTRODUCED BY COUNCIL MEMBER GILLIT)

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) "AGREEMENT REGARDING FUNDING OF BIORETENTION DEMONSTRATION PROJECT FOR STORMWATER QUALITY AND QUANTITY DATA GATHERING AND ANALYSIS" - AGREEMENT NO. 16-01.17 PROJECT NO. 105987, BETWEEN THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT AND THE CITY OF ENGLEWOOD.

(iii) ORDINANCE NO. 9, SERIES OF 2016 (COUNCIL BILL NO. 7, INTRODUCED BY COUNCIL MEMBER GILLIT)

AN ORDINANCE AUTHORIZING THE APPLICATION FOR AND ACCEPTANCE OF A VICTIM ASSISTANCE LAW ENFORCEMENT (VALE) GRANT FROM THE VICTIM ASSISTANCE LAW ENFORCEMENT BOARD OF THE 18TH JUDICIAL DISTRICT.

(c) Resolutions and Motions

(i) RESOLUTION NO. 42, SERIES OF 2016

A RESOLUTION FOR AN INFORMATION TECHNOLOGY NETWORK INFRASTRUCTURE UPGRADE BY SOLE SOURCE FOR THE CITY OF ENGLEWOOD.

(ii) RESOLUTION NO. 43, SERIES OF 2016

A RESOLUTION AMENDING THE CITY OF ENGLEWOOD'S ICMA-RC MONEY PURCHASE RETIREMENT PLAN FOR MANAGEMENT STAFF (PLAN), NUMBER 108369.

(iii) RESOLUTION NO. 44, SERIES OF 2016

A RESOLUTION AMENDING THE CITY OF ENGLEWOOD'S ICMA-RC MONEY PURCHASE RETIREMENT PLAN FOR POLICE (PLAN), NUMBER 108370.

(iv) RESOLUTION NO. 45, SERIES OF 2016

A RESOLUTION AMENDING THE CITY OF ENGLEWOOD'S ICMA-RC NONEMERGENCY EMPLOYEES MONEY PURCHASE PLAN (PLAN), NUMBER 108371.

(v) RESOLUTION NO. 46, SERIES OF 2016

A RESOLUTION AMENDING THE CITY OF ENGLEWOOD'S ICMA-RC MONEY PURCHASE RETIREMENT PLAN FOR THE SEPARATE ACCOUNT (PLAN), NUMBER 108372.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

10. Public Hearing Items

No public hearing was scheduled before Council.

11. Ordinances, Resolutions and Motions

(a) Approval of Ordinances on First Reading

(i) Manager Hollingsworth presented a recommendation from the Community Development Department to approve a bill for an ordinance approving the Brew on Broadway's paseo lease renewal for a portion of the City-owned property at 3499 South Broadway.

COUNCIL MEMBER OLSON MOVED, AND COUNCIL MEMBER BARRENTINE SECONDED, TO AMEND AGENDA ITEM 11 (a) (i) - COUNCIL BILL NO. 8 TO EXTEND THE LEASE TO 3 YEARS.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

COUNCIL MEMBER YATES MOVED, AND COUNCIL MEMBER GILLIT SECONDED, TO APPROVE COUNCIL BILL NO. 8 AS AMENDED.

COUNCIL BILL NO. 8, INTRODUCED BY COUNCIL MEMBER YATES

A BILL FOR AN ORDINANCE AUTHORIZING THE RENEWAL OF A LEASE WITH PAUL WEBSTER, FOR USE A PORTION OF REAL PROPERTY THE "PASEO" LOCATED AT 3449 SOUTH BROADWAY AS OUTDOOR SEATING FOR "THE BREW ON BROADWAY".

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

(ii) Manager Hollingsworth presented a recommendation from the Community Development Department to approve a bill for an ordinance approving ZOMO's paseo lease agreement for a portion of the City-owned property at 3499 South Broadway.

COUNCIL MEMBER BARRENTINE MOVED, AND COUNCIL MEMBER OLSON SECONDED, TO AMEND AGENDA ITEM 11 (a) (ii) - COUNCIL BILL NO. 9 TO EXTEND THE LEASE TO 3 YEARS.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

COUNCIL MEMBER YATES MOVED, AND COUNCIL MEMBER RUSSELL SECONDED, TO APPROVE COUNCIL BILL NO. 9 AS AMENDED.

AMENDED COUNCIL BILL NO. 9, INTRODUCED BY COUNCIL MEMBER YATES

A BILL FOR AN ORDINANCE AUTHORIZING A LEASE WITH ZOMO, LLC. FOR USE OF A PORTION OF THE REAL PROPERTY "THE PASEO" LOCATED AT 3449 SOUTH BROADWAY AS OUTDOOR SEATING FOR "ZOMO".

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

(iii) Senior Planner Stitt presented a recommendation from the Community Development Department to adopt a bill for an ordinance authorizing the Second Amendment to the Intergovernmental Agreement between the City of Englewood and the Regional Transportation District (RTD) for cost sharing for operation of the Art Shuttle for 2016.

COUNCIL MEMBER OLSON MOVED, AND COUNCIL MEMBER MARTINEZ SECONDED, TO APPROVE AGENDA ITEM 11 (a) (iii) - COUNCIL BILL NO. 10.

COUNCIL BILL NO. 10, INTRODUCED BY COUNCIL MEMBER OLSON

A BILL FOR AN ORDINANCE AUTHORIZING A SECOND AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT AMENDING THE "ART" SHUTTLE COST SHARING INTERGOVERNMENTAL AGREEMENT BETWEEN THE REGIONAL TRANSPORTATION DISTRICT AND THE CITY OF ENGLEWOOD.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

(b) Approval of Ordinances on Second Reading

There were no additional items submitted for approval on second reading. (See Agenda Item 9 (b) - Consent Agenda.)

(c) Resolutions and Motions

(i) Commander Englert presented a recommendation from the Police Department to approve, by motion, of the 2016 Logistics Systems Service, License and Maintenance Agreement in the amount of \$30,005.00 for the Police Department Records Management System.

COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER YATES SECONDED, TO APPROVE AGENDA ITEM 11 (c) (i) - THE 2016 LOGISTICS SYSTEMS SERVICE, LICENSE AND MAINTENANCE AGREEMENT IN THE AMOUNT OF \$30,005.00 FOR THE POLICE DEPARTMENT RECORDS MANAGEMENT SYSTEM.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

(ii) Manager Lee presented a recommendation from the Parks, Recreation & Library Department to approve, by motion, the purchase of a 2016 Chevrolet Silverado 2500 pickup truck.

COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER YATES SECONDED, TO APPROVE AGENDA ITEM 11 (c) (ii) - THE PURCHASE OF A 2016 CHEVROLET SILVERADO 2500 PICKUP TRUCK.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

(iii) Manager Lee presented a recommendation from the Parks, Recreation & Library Department to approve, by motion, the purchase of two John Deere 1580 Terrain Cut mowers with a 72 inch deck.

COUNCIL MEMBER OLSON MOVED, AND COUNCIL MEMBER YATES SECONDED, TO APPROVE AGENDA ITEM 11 (c) (iii) - THE PURCHASE OF TWO JOHN DEERE 1580 TERRAIN CUT MOWERS WITH A 72 INCH DECK.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

(iv) Manager White presented a recommendation from the Utilities Department to approve, by motion, the purchase of a Chevrolet Silverado 2500 truck.

COUNCIL MEMBER YATES MOVED, AND COUNCIL MEMBER OLSON SECONDED, TO APPROVE AGENDA ITEM 11 (c) (iv) - THE PURCHASE OF A CHEVROLET SILVERADO 2500 TRUCK.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

(v) Manager Vega presented a recommendation from the Human Resources Department to approve a resolution setting the list of persons eligible for appointment as hearing officers for disciplinary and merit appeals.

COUNCIL MEMBER RUSSELL MOVED, AND COUNCIL MEMBER GILLIT SECONDED, TO APPROVE AGENDA ITEM 11 (c) (v) - RESOLUTION NO. 47, SERIES OF 2016.

RESOLUTION NO. 47, SERIES OF 2016

A RESOLUTION SETTING THE LIST OF PERSONS ELIGIBLE FOR APPOINTMENT AS HEARING OFFICERS FOR DISCIPLINARY AND MERIT APPEALS.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

(vi) Manager Vega presented a recommendation from the Human Resources Department to approve, by motion, the appointment of a hearing officer for a disciplinary appeal.

COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER YATES SECONDED, TO APPROVE JOHN P. DIFALCO AS THE HEARING OFFICER FOR A DISCIPLINARY APPEAL.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried.

12. **General Discussion**

(a) **Mayor's Choice**

(i) Mayor Jefferson presented Notice of a Special City Council Meeting on Monday, February 22, 2016, at 5:30 p.m. regarding an Executive Session on the lease between the Englewood McLellan Reservoir Foundation (EMRF) and MKS, LLC.

CITY COUNCIL DETERMINED THAT THERE WILL NOT BE A SPECIAL CITY COUNCIL MEETING, HOWEVER THE CITY COUNCIL STUDY SESSION WILL BEGIN AT 5:30 PM ON FEBRUARY 22, 2016.

(b) **Council Members' Choice**

(i) Discussion ensued regarding the selection of an executive search firm to facilitate the City Attorney recruitment process.

COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER YATES SECONDED, TO SELECT SGR AS THE EXECUTIVE SEARCH FIRM TO FACILITATE THE CITY ATTORNEY RECRUITMENT PROCESS.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried

(ii) Discussion ensued regarding going into Executive Session to discuss the Civic Center Facility.

COUNCIL MEMBER GILLIT MOVED, AND COUNCIL MEMBER BARENTINE SECONDED, TO TABLE THE EXECUTIVE SESSION FOR AN UNCERTAIN DATE.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit
Nays: None

Motion carried

Discussion ensued regarding moving a regular Council Meeting due to members being away at a conference.

COUNCIL MEMBER YATES MOVED, AND COUNCIL MEMBER GILLIT SECONDED, TO HAVE A REGULAR COUNCIL MEETING ON FEBRUARY 29, 2016.

Vote results:

Ayes: Council Members Yates, Gillit

Nays: Council Members Russell, Barrentine, Olson, Jefferson, Martinez

Motion defeated.

COUNCIL MEMBER OLSON MOVED, AND COUNCIL MEMBER BARRENTINE SECONDED, TO HAVE A REGULAR COUNCIL MEETING ON MARCH 14, 2016.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit

Nays: None

Motion carried

13. City Manager's Report

City Manager Keck did not have any matters to bring before Council.

14. City Attorney's Report

(a) Acting City Attorney Comer presented a recommendation to settle the Martinez vs. City of Englewood case for \$3,000.00.

COUNCIL MEMBER YATES MOVED, AND COUNCIL MEMBER BARRENTINE SECONDED, TO SETTLE THE MARTINEZ VS. CITY OF ENGLEWOOD CASE FOR \$3,000.00.

Vote results:

Ayes: Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez, Gillit

Nays: None

Motion carried

15. Adjournment

MAYOR JEFFERSON MOVED TO ADJOURN. The meeting adjourned at 9:58 p.m.

/s/ Loucrishia A. Ellis
City Clerk



PROCLAMATION

WHEREAS, food is the substance by which life is sustained; and

WHEREAS, the type, quality, and amount of food that individuals consume each day plays a vital role in their overall health and physical fitness; and

WHEREAS, there is a need for continuing nutrition education and a wide-scale effort to enhance healthy eating practices.

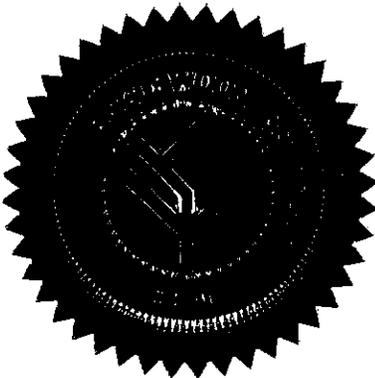
NOW THEREFORE, I, Joe Jefferson, Mayor of the City of Englewood, Colorado, hereby proclaim the month of **March 2016** as:

NATIONAL NUTRITION MONTH

in the City of Englewood, Colorado. I encourage all of our residents to join the campaign and become concerned about their nutrition and the nutrition of others in the hope of achieving optimum health for both today and tomorrow.

GIVEN under my hand and seal this 14th day of March, 2016.

Joe Jefferson, Mayor



COUNCIL COMMUNICATION

Meeting Date: March 14, 2016	Agenda Item: 8b	Subject: Appointment of Stacie Flynn from alternate seat to regular seat on Board of Adjustment and Appeals
Initiated By: City Council		Staff Source: Audra Kirk, Planner II

PREVIOUS COUNCIL ACTION

Council has appointed alternates to fill regular seats on Boards and Commissions.

RECOMMENDED ACTION

The Board of Adjustment and Appeals recommends Council approve a resolution appointing Stacie Flynn from alternate to regular member on Board of Adjustment and Appeals.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Jedidiah Williamson resigned from the Board of Adjustment and Appeals on February 11, 2016.

Stacie Flynn applied for appointment to the Board of Adjustments and Appeal in 2015. She was interviewed by City Council in June 2015 and appointed as a voting alternate member on July 6, 2015.

As an alternate, Stacie has attended 6 of 6 meetings.

Chair Carson Green submitted a recommendation letter to appoint alternate Stacie Flynn as a regular member of the Board of Adjustment and Appeals to fill the vacancy created by Mr. Williamson's resignation.

FINANCIAL IMPACT

There is no financial impact.

LIST OF ATTACHMENTS

Resolution
Application
Letter of Recommendation

Name	Stacie Flynn
Home Address (Street, City, Zip)	2956 S Bannock Street, Englewood, 80110
Employer Name & Address	Jordy Construction, 1212 S. Broadway, Suite 100, Denver, CO 80210
Home Phone Number	815-404-1710
Work Phone Number	303-598-4131
Cell Phone Number	815-404-1710
Email Address	staciewflynn@gmail.com
How long have you lived in Englewood?	17 months
How long have you lived at this address?	17 months

2. Education - Please list schools, colleges, or universities attended; years attended; and areas of study or degrees conferred.

Education

Colorado State University
Sept. 2005 - Jan. 2006 - Certificate in Construction Management

Eastern Illinois University
Aug. 1996 - May 2000 - BA, Economics

3. Professional Experience - Starting from the present and proceeding to the past, please list any business, professional, or general experience you may want City Council to consider.

Professional Experience

Jordy Construction
Manager of Pre-Construction
February 2009- Present

American Society of Professional Estimators (ASPE)
President, Denver Chapter #5
2013 - Present
~Meetings are the 2nd Tuesday, Sept- May

4. Community Activities - Please list any memberships you may have in community social, civic, or other organizations that you want to be considered.

Community Activities
Not answered

5. Narrative Statement - Please provide a brief statement indicating why you would like to be appointed to this board or commission.

Narrative Statement

I have been involved with the construction and development industry since I graduated college. I have worked as an owner's rep, for a subcontractor and for the past 11 years for a general contractor in Denver. I think I would be a great addition to the Planning & Zoning Commission with my construction experience and general interest in city development.

My husband and I bought our first home, in Englewood, as we liked the small town atmosphere with big city conveniences. We saw the potential this city had and I want to ensure that the ideals are maintained while the city grows. I believe in progress and change for the better, as long as it is done with the good of all in mind.

Board or Commission Preference

6. Are you currently serving on a Board, Commission, or Authority?
 No

7. If so, please provide the name of the board(s):
Name of Current Board:
Not answered

8. Are you applying for reappointment to your current board(s)?
 No

9. If you are a new applicant or a current board member interested in serving on additional boards, please list the Boards or Commissions on which you might like to serve. Please indicate your preference, up to five (5) boards, with number "1" being your first choice.

Board of Adjustment and Appeals	2
Budget Advisory Committee	Not answered
Code Enforcement Advisory Committee	Not answered
Cultural Arts Commission	Not answered
Election Commission	Not answered
Firefighters' Pension Board	Not answered
Housing Authority	Not answered
Keep Englewood Beautiful	Not answered
Liquor & Medical Marijuana Licensing Authority	Not answered
Malley Center Trust Fund	Not answered
Non-Emergency Retirement Board	Not answered
Parks & Recreation Commission	Not answered
Planning & Zoning Commission	1
Police Officers Pension Board	Not answered
Public Library Board	Not answered
Transportation Advisory Committee	Not answered
Urban Renewal Authority	Not answered
Water & Sewer Board	Not answered

10. Are you a City of Englewood employee?
 No

11. Are you a former City of Englewood employee?
 No

12. If you were a City of Englewood employee, what department did you work for and what position did you hold?
Department and position:
Not answered

13. Are you related to a City of Englewood employee?
 No

14. If related to a City employee, please list the employee's name(s) and relationship.
Name & Relationship
Not answered

15. Please list days of the week (Monday through Thursday) when you would be unavailable to attend meetings.
[x] I am available any day of the week.

For City use, only. Please do not fill in.

Date Received: 5-1-2015
District: 1

Choices: 1 P&Z 2 BOA
3 _____ 4 _____ 5 _____

Mayor Jefferson and City Council
City of Englewood
1000 Englewood Parkway
Englewood, CO 80110

February 17th, 2016

Mayor Jefferson and Council,

As you may know, the Board of Adjustment and Appeals is unfortunately losing one of our members, Jedidiah Williamson, because he and his wife are moving out of Englewood. We will miss having him on the board.

I recommend that you appoint our current alternate, Stacie Flynn, to be a full member of the board. She has already had a chance to participate and contribute several times and will be a great addition.

Thank you for your consideration,

Sincerely, 

Carson Green

RESOLUTION NO. _____
SERIES OF 2016

A RESOLUTION APPOINTING STACIE FLYNN TO THE BOARD OF ADJUSTMENT AND APPEALS FOR THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the Englewood Board of Adjustments and Appeals has the authority to hear and determine appeals from the refusal of building permits and other decisions regarding the enforcement of the zoning regulations, to make exceptions to the zoning regulations and to authorize variances from the strict application of zoning regulations; and

WHEREAS, there is a vacancy in the Englewood Board of Adjustment and Appeals; and

WHEREAS, Stacie Flynn has graciously applied to serve as a member of the Englewood Board of Adjustment and Appeals; and

WHEREAS, Stacie Flynn was previously named as an alternate member of Board of Adjustment and Appeals; and

WHEREAS, the Englewood City Council desires to appoint Stacie Flynn to the Englewood Board of Adjustment and Appeals;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. Stacie Flynn is hereby appointed to the Englewood Board of Adjustment and Appeals. Stacie Flynn's term will be effective immediately and will expire February 1, 2019.

ADOPTED AND APPROVED this 14th day of March, 2016.

ATTEST:

Joe Jefferson, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2016.

Loucrishia A. Ellis, City Clerk

COUNCIL COMMUNICATION

Date: March 14, 2016	Agenda Item: 9ai	Subject: Bulletproof Vest Partnership - Intergovernmental Agreement
Initiated By: Police Department		Staff Source: Commander Gary Condrey

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council has previously approved our participation in this program since 1999.

RECOMMENDED ACTION

The Police Department recommends that City Council adopt a bill for an ordinance authorizing the Englewood Police Department to accept funding from the U.S. Department of Justice - Office of Justice Programs - Bulletproof Vest Partnership / Body Armor Safety Initiative which will assist the Police Department with the purchase of bulletproof vests.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Bulletproof Vest Partnership Grant Act of 1998 is a U.S. Department of Justice initiative designed to provide a critical resource to State and local law enforcement. The U.S. Department of Justice will reimburse local law enforcement, including the Englewood Police Department, 50% of the department's cost to purchase bulletproof vests for its police officers. The U. S. Department of Justice has a "mandatory wear" policy which the department is in compliance with.

FINANCIAL IMPACT

This program will reimburse the Police Department 50% towards the cost of bulletproof vests that are purchased during the grant period of April 1, 2015 through August 31, 2017. The department has been awarded \$6,590.78 for this grant period. The remainder of the cost will be paid for from the Police Department's 2015, 2016 and 2017 Clothing budget.

LIST OF ATTACHMENTS

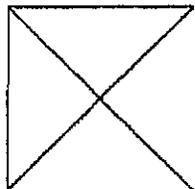
Bulletproof Vest Partnership Application Details
Bulletproof Vest Partnership Information
Bill for an Ordinance



Notice: Critical Program Information [\(Click here\)](#)

[Home](#) | [Login](#) | [Site Map](#) | [Contact Us](#)

Bulletproof Vest Partnership
[LOGIN](#)
[EASY STEPS](#)
[PROGRAM RESOURCES](#)
[OTHER RESOURCES](#)
[FAQs](#)
Body Armor Safety Initiative
[NEWS](#)
[CURRENT ACTIVITIES](#)
[OFFICIAL STATEMENTS](#)
[SUMMIT INFORMATION](#)
[BODY ARMOR RESOURCES](#)
[FAQs](#)



Bulletproof Vest Partnership



The Bulletproof Vest Partnership (BVP), created by the Bulletproof Vest Partnership Grant Act of 1998 is a unique U.S. Department of Justice initiative designed to provide a critical resource to state and local law enforcement.

ONE MILLION BVP VESTS: Since 1999, the BVP program has awarded more than 13,000 jurisdictions, a total of \$393 million in federal funds for the purchase of over one million vests (1,197,348 as of December, 2014). BVP is a critical resource for state and local jurisdictions that saves lives. Based on data collected and recorded by BJA staff, in FY 2012, protective vests were directly attributable to saving the lives of at least 33 law enforcement and corrections officers, in 20 different states, an increase 13.7% over FY 2011. At least 14 of those life-saving vests had been purchased, in part, with BVP funds.

News: The Bureau of Justice Assistance is pleased to announce the Fiscal Year 2015 BVP funds are available for use. The FY 2015 award funds may only be used for the latest National Institute of Justice (NIJ) compliant armored vests which are ordered on or after April 1, 2015. The deadline to request payments from the FY 2015 award funds is August 31, 2017.

The complete list of FY 2015 BVP awards can be viewed [here](#).

The complete list of FY 2014 BVP awards can be viewed [here](#).

The complete list of FY 2013 BVP awards can be viewed [here](#).

Documentation Requirement: Grantees are required to keep documentation to support the BVP vest application and payment requests for at least a three year period.

Other Federal Funds: Justice Assistance Grant (JAG) funds or other federal funding sources may not be used to pay for that portion of the bullet proof vest (50%) that is not covered by BVP funds. JAG or other federal funds may be used to purchase vests for an agency, but they may not be used as the 50% match for BVP purposes.

NEW! UPDATED Mandatory Wear FAQs

Following two years of declining law enforcement officer line-of-duty deaths, the country realized a dramatic 37 percent increase in officer deaths in 2010. Fifty-nine of the 160 officers killed in 2010 were shot during violent encounters; a 20 percent increase over 2009 numbers. The U.S. Department of Justice is committed to improving officer safety and has undertaken research to review and analyze violent encounters and law enforcement officer deaths and injuries. Due to the increase in the number of law enforcement officer deaths, coupled with our renewed efforts to improve officer safety, beginning with FY 2011, in order to receive BVP funds, jurisdictions must certify, during the application process, that all law

NIJ Advisory and Safety Notices

Current National Institute of Justice Body Armor Standard 0101.06

NEW 2-25-16: NIJ Advisory Notice

- [PACA model – CIIIA-2](#)
- [Gall's model – CIIIA-2](#)
- [Point Blank Enterprises model – CIIIA-2](#)

10-13-15: NIJ Safety Notice

- [Paraclete model – LXIIIA-1](#)
- [Gall's model – LXIIIA-1](#)
- [PACA model – LXIIIA-1](#)
- [Protective Products model – LXIIIA-1](#)
- [Point Blank Body Armor model – LXIIIA-1](#)
- [Paraclete model – LXIIIAF-1](#)
- [Gall's model – LXIIIAF-1](#)
- [PACA model – LXIIIAF-1](#)
- [Protective Products model – LXIIIAF-1](#)
- [Point Blank Body Armor model – LXIIIAF-1](#)

9-15-15: NIJ Advisory Notice

- [U.S. Armor Corporation model - 5226](#)

8-27-15: NIJ Advisory Notice

- [Central Lake Express model - SERFG-B-II](#)

Body Armor Labels: When in Doubt Check It Out [\(Click here for additional information\)](#)

Closed NIJ Advisory Notices and Safety Notices

Previous National Institute of Justice Body Armor Alerts

10-24-13: NIJ Advisory Notice

- [Safariland, LLC Models BA-2000S-HP02F and BA-2000S-SX01F](#)
- [American Body Armor Models BA-2000S-HP02F and BA-2000S-SX01F](#)
- [Second Chance Models BA-2000S-HP02F](#)

8-4-14: NIJ Advisory Notice

- [Force One Model ASL2](#)

6-28-13: NIJ Advisory Notice

- [Safariland, model 2220-1](#)

6-13-13: NIJ Advisory Notice

- [Pacific Safety Products Inc. Ballistic Body Armor Model 06UG2A8H](#)

4-17-2013: NIJ Safety Notice

- [Point Blank Body Armor, model CB-S2-9II](#)
- [Point Blank Body Armor, model CB-S3-BIIIA-2](#)

National Institute of Justice Body Armor Safety Initiative Website

enforcement agencies benefitting from the BVP Program have a written "mandatory wear" policy in effect. This policy must be in place for at least all uniformed officers before any FY 2011 funding can be used by the agency. There are no requirements regarding the nature of the policy other than it being a mandatory wear policy for all uniformed officers while on duty. BJA strongly encourages agencies to consult the International Association of Chiefs of Police's Model Policy on Body Armor and to strongly consider all recommendations within that policy. This policy change was announced in October 2010 by Attorney General Holder after consulting with and receiving input from the law enforcement community.

[Body Armor Safety Initiative Archive](#)

**All media contacts should be directed to the [Office of Justice Programs, Office of Communications](#).

The IACP has very generously provided both its Body Armor Model Policy and position paper to the BVP program. In order to obtain a copy of the Model Policy and position paper, jurisdictions must be registered with the BVP program. To obtain a copy of the Model Policy, contact the BVP Customer Support Center at 1-877-758-3787 or email vests@usdoj.gov.

For additional information regarding this new BVP program requirement, click [here](#).

For immediate assistance, please call us toll-free at 1-877-758-3787. You may also reach us by email at vests@usdoj.gov



[/NIJ Standards](#) [/Glossary](#) [/BVP Manuals](#)

Section Status > Application History > Application Details OMB #1121-0235
(Expires: 10/31/2016)

- 1. Registration**
- 1.1 [Agency Information](#)
- 1.2 [Agency Contacts](#)
- 2. Application**
- 2.1 [Application Profile](#)
- 2.2 [Manage Application](#)
- 2.3 [Review Application](#)
- 2.4 [Submit Application](#)
- 2.5 [Mandatory Wear Policy](#)
- 3. Payment**
- 3.1 [Bank Information](#)
- 3.2 [Print Bank Form](#)
- 3.3 [Manage Receipts](#)
- 3.4 [Payment Request](#)
- 3.5 [Payment History](#)
- 4. Status**
- 4.1 [Current Status](#)
- 4.2 [LEA Status](#)
- 4.3 [Application History](#)
- 5. Personal Information**
- 5.1 [User Profile](#)
- 5.2 [Change Password](#)

Application Profile

Participant	ENGLEWOOD CITY
Fiscal Year	2015
Number of Agencies Applied	0
Total Number of Officers for Application	75
Number of Officers on Approved Sub-Applications	75
<u>Unspent BVP Funds</u> Remaining	\$0.00
Unspent BVP Funds <u>Obligated</u> for Vest Purchases	\$0.00

Sub-Application Profile

Fiscal Year	2015
<u>Vest Replacement Cycle</u>	5
Number of Officers	75
Zylon Replacement	0
<u>Emergency Replacement Needs</u> Stolen or Damaged Officer Turnover	0



BVP HELP DESK
(Toll-Free 1-877-758-3787)

Application Details

NIJ#	Quantity	Unit Price	Extended Cost	Tax Shipping and Handling	Total Cost
BA-3A00S-XT02	18	\$750.00	\$13,500.00	\$0.00	\$13,500.00
Grand Totals	18		\$13,500.00	\$0.00	\$13,500.00

Award Summary for FY2015 Regular Solicitation

Funds Type	Eligible Amount	Award	Date Approved	Status
Regular Fund	\$13,500.00	\$6,590.78	08/11/15	Approved by BVP

Grand Totals: \$13,500.00 \$6,590.78

[Return](#)

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 16
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING THE CITY OF ENGLEWOOD, COLORADO TO APPLY FOR AND ACCEPT FUNDING FROM THE U.S. DEPARTMENT OF JUSTICE - OFFICE OF JUSTICE PROGRAMS, FOR THE PURCHASE OF BULLET PROOF VESTS.

WHEREAS, the Bullet Proof Vest Partnership Grant Act of 1998 is a U.S. Department of Justice initiative designed to provide a critical resource to state and local law enforcement; and

WHEREAS, the U.S. Department of Justice will reimburse local law enforcement, including the Englewood Police Department, 50% of the department's investment in the purchase of bullet proof vests for its police officers; and

WHEREAS, federal funds from the U.S. Department of Justice fund are used; and

WHEREAS, the U.S. Department of Justice has mandated a "mandatory wear" policy to qualify for receiving the Grant and the Englewood Police Department is in compliance; and

WHEREAS, the City Council of the City of Englewood, Colorado authorized application and acceptance of funds from the U.S. Department of Justice - Office of Justice Programs to assist the Englewood Police Department with the purchase of bullet proof vests by Ordinance No. 29, Series of 2011 and Ordinance No. 9, Series of 2014; and

WHEREAS, the passage of this Ordinance authorizes the Englewood Police Department to apply for and accept funding from the U.S. Department of Justice - Office of Justice Programs, which will assist the Englewood Police Department with the purchase of bullet proof vests for this grant period of April 1, 2015 through August 31, 2017.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the application for and acceptance of a grant from the U.S. Department of Justice - Office of Justice Programs to assist the Englewood Police Department with the purchase of bullet proof vests for the grant period of April 1, 2015 through August 31, 2017.

Introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 17th day of March, 2016.

Published as a Bill for an Ordinance on the City's official website beginning on the 16th day of March, 2016 for thirty (30) days.

Joe Jefferson, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date: March 14, 2016	Agenda Item: 9bi	Subject: Paseo Lease Renewal – Brew on Broadway (Second Reading)
Initiated By: Community Development Department		Staff Source: Darren Hollingsworth Economic Development Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

At the February 16, 2016, meeting Council amended the agreement to authorize a 3 year lease term at \$1/ square foot.

At the February 1, 2016, study session City Council discussed the paseo lease renewal for the Brew on Broadway (BoB) and recommended a 1 year lease for \$1 per square foot.

To initiate business retention, revitalization, and growth strategies.

Create economic vibrancy in downtown Englewood by activating public spaces.

RECOMMENDED ACTION

Staff recommends that City Council approve a bill for ordinance, on second reading, approving the Brew on Broadway's paseo lease renewal for a portion of the City-owned property at 3449 South Broadway, on first reading.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

A portion of the City-owned paseo is currently leased to an adjacent business owner, the Brew on Broadway (BoB), a brewery and coffee shop, for outside seating to support his operation. The lease agreement with the BoB at 3445 South Broadway has been in place since April 2013 and expires in April 2016.

Outside seating in the west-side paseo creates vibrancy in downtown Englewood by activating public spaces.

FINANCIAL IMPACT

The City will receive an annual lease payment of \$914.00 from the Brew on Broadway. Since it is the tenant's responsibility to maintain the leased premises, the City should not incur any cost for the maintenance during the term of the leases. Below is a summary of the lease terms for these lease agreements:

Tenant	Term	Square Feet	Annual Lease Amount
Brew on Broadway	April 2016 thru April 2019	914	\$914.00

LIST OF ATTACHMENTS

Proposed Bill for Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 8
INTRODUCED BY COUNCIL
MEMBER OLSON/YATES

AN ORDINANCE AUTHORIZING THE RENEWAL OF A LEASE WITH PAUL WEBSTER, FOR USE OF A PORTION OF REAL PROPERTY THE "PASEO" LOCATED AT 3449 SOUTH BROADWAY AS OUTDOOR SEATING FOR "THE BREW ON BROADWAY".

WHEREAS, the City owns property commonly known as the "Paseo" at 3449 South Broadway, Englewood, CO.; and

WHEREAS, the Englewood City Council previously authorized a 3 year lease with "The Brew On Broadway" Paul Webster, Suzanne Odiorne-Webster, Matthew Webster and Charles Houck for a portion of property the "Paseo" at 3449 South Broadway for outdoor seating by the passage of Ordinance No. 67, Series of 2013; and

WHEREAS, on February 16, 2016 the Englewood City Council moved to amend the lease from one year to three years; and

WHEREAS, the approval of this Ordinance will permit "The Brew On Broadway" Paul Webster to lease a portion of real property the "Paseo" located at 3449 South Broadway for outdoor seating for another 3 year, period beginning on April 1, 2016 through April 1, 2019; and

WHEREAS, the Englewood City Council finds that the renewal of a lease of a portion of the "Paseo" property to The Brew on Broadway will enhance the usefulness and vitality of the Downtown Englewood Business area;

WHEREAS, this agreement will benefit and promote the welfare of the City of Englewood.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The Englewood City Council here by authorizes a renewal of a Lease with Paul Webster for use a portion of the real property "Paseo" located at 3449 South Broadway as outdoor seating for "The Brew On Broadway" beginning on April 1, 2016 through April 1, 2019. A copy of the "Lease" is marked as "Exhibit A" and attached hereto.

Section 2. The Mayor is hereby authorized to sign and the City Clerk shall attest said Lease on behalf of the City of Englewood.

Introduced, read in full, amended and passed as amended on first reading on the 16th day of February, 2016.

Published by Title as an amended Bill for an Ordinance in the City's official newspaper on the 18th day of February, 2016.

Published as an amended Bill for an Ordinance on the City's official website beginning on the 17th day of February, 2016 for thirty (30) days.

Read by title as amended and passed on final reading on the 14th day of March, 2016.

Published by title as amended in the City's official newspaper as Ordinance No. ____, Series of 2016, on the 17th day of March, 2016.

Published by title as amended on the City's official website beginning on the 16th day of March, 2016 for thirty (30) days.

Joe Jefferson, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the amended Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2016.

Loucrishia A. Ellis

**LEASE OF CITY OWNED PROPERTY FOR OUTDOOR SEATING FOR
"THE BREW ON BROADWAY"**

This lease, dated _____, is between the CITY OF ENGLEWOOD, 1000 Englewood Parkway, Englewood, Colorado 80110, as Landlord and PAUL WEBSTER, whose address is 3445 South Broadway, Englewood 80113 as Tenant.

In consideration of the payment of the rent and the performance of the covenants and agreements by the Tenant set forth herein, the Landlord does hereby lease to the Tenant the following described premises situate in Arapahoe County, in the State of Colorado; the address of which is 3449 South Broadway, Englewood, Colorado 80113, more fully described as follows:

That portion of Lots 35 and 36 Block 1 Enwood Addition as defined in Exhibit A.

Said parcel contains approximately 914 square feet.

Said premises, with all the appurtenances, are leased to the Tenant from the date of April 1, 2016 - April 1, 2019, at and for a rental for the full term of one dollar per square foot with the payment in the amount of \$914.00 on approval of the Lease by Tenant. The rent shall be due on April 1 of each renewal year, payable at 1000 Englewood Parkway, Englewood, Colorado 80110 Attention: Finance Department, without notice.

THE TENANT, IN CONSIDERATION OF THE LEASING OF THE PREMISES AGREES AS FOLLOWS:

1. To pay the rent for the premises above-described, in advance.
2. To keep the improvements upon the premises including drainage, fences, wiring and lighting in good repair, all at Tenant's expense, and at the expiration of this lease to surrender the premises in the same condition as when the Tenant entered the premises, loss by fire, inevitable accident, and ordinary wear excepted. Tenant shall post a bond with the City in the amount of five thousand dollars (\$5,000.00) to secure the removal of improvements or repairs should the Tenant fail to surrender premises as described herein.
3. To keep the premises free and clear of ice and snow, and to keep the entire premises free from all litter, dirt, debris and obstructions; to keep the premises in a clean and sanitary condition as required by the ordinances of the city and county in which the property is situated.
4. To sublet no part of the premises, and not to assign the lease or any interest therein.

5. To use the premises only as seating for the adjoining premises at 3445 South Broadway and to use the premises for no purposes prohibited by the laws of the United States or the State of Colorado, or of the ordinances of the city or town in which said premises are located, and for no improper or questionable purposes whatsoever, and to neither permit nor suffer any disorderly conduct, noise or nuisance having a tendency to annoy or disturb any persons occupying adjacent premises.
6. To neither hold nor attempt to hold the Landlord liable for any injury or damage, either proximate or remote, occurring through or caused by the repairs, alterations, injury or accident to the premises, or adjacent premises, or other parts of the above premises not herein demised, or by reason of the negligence or default of the owners or occupants thereof or any other person, nor to hold the Landlord liable for any injury or damage occasioned by defective electric wiring, plumbing or storm water, nor shall said premises be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous, nor make any alterations to or changes in, upon, or about the premises without obtaining the written consent of the Landlord therefore.
7. To allow the Landlord to enter upon the premises at any reasonable hour.

IT IS EXPRESSLY UNDERSTOOD AND AGREED BETWEEN LANDLORD AND TENANT AS FOLLOWS:

8. No assent, express or implied, to any breach of any one or more of the agreements hereof shall be deemed or taken to be a waiver of any succeeding or other breach.
9. If, after the expiration of this lease, the Tenant shall remain in possession of the premises and continue to pay rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to the last month's rent paid under this lease, and subject to all the terms and conditions of this lease.
10. If the premises are left vacant and any part of the rent reserved hereunder is not paid, then the Landlord may, without being obligated to do so, and without terminating this lease, retake possession of the said premises, making such changes and repairs as may be required, giving credit for the amount of rent so received less all expenses of such changes and repairs, and the Tenant shall be liable for the balance of the rent herein reserved until the expiration of the term of this lease.
11. At the Landlord's option, it shall be deemed a breach of this lease if the Tenant defaults (a) in the payment of the rent or any other monetary obligation herein; or (b) in the performance of any other term or condition of this lease. The Landlord may elect to cure such default and any expenses of curing may be added to the rent and shall become immediately due and payable.

In the event that the Landlord elects to declare a breach of this lease, the Landlord shall have the right to give the Tenant three (3) days written notice requiring payment of the rent or compliance with other terms or provisions of the lease, or delivery of the possession of the premises. In the event any default remains uncorrected after three (3) days written notice, the Landlord, at Landlord's option, may declare the term ended, repossess the premises, expel the Tenant and those claiming through or under the Tenant and remove the effects of the Tenant, all without being deemed guilty in trespass or of a forcible entry and detainer and without prejudice to any other remedies to which the Landlord may be entitled. If at any time this lease is terminated under this paragraph, the Tenant agrees to peacefully surrender the premises to the Landlord immediately upon termination, and if the Tenant remains in possession of the premises, the Tenant shall be deemed guilty of unlawful detention of the premises. The Landlord shall be entitled to recover from the Tenant all damages by reason of the Tenant's default, including but not limited to the cost to recover and repossess the premises, the expenses of reletting, necessary renovation and alteration expenses, commissions and the rent for the balance of the term of this lease.

12. In the event of any dispute arising under the terms of this lease, or in the event of non-payment of any sums arising under this lease and in the event the matter is turned over to an attorney, the party prevailing in such dispute shall be entitled, in addition to other damages or costs, to receive reasonable attorneys' fees from the other party.
13. In the event any payment required hereunder is not made within (10) days after the payment is due, a late charge in the amount of five percent (5%) of the payment will be paid by the Tenant.
14. In the event of a condemnation or other taking by any governmental agency, all proceeds shall be paid to the Landlord hereunder, the Tenant waiving all right to any such payments.
15. This lease is made with the express understanding and agreement that in the event the Tenant becomes insolvent, the Landlord may declare this lease ended, and all rights of the Tenant hereunder shall terminate and cease.
16. Tenant shall insure the premises for public liability and property damage in the sum of One Million Dollars with the City of Englewood as an additional insured.
17. Should any provision of this lease violate any federal, state or local law or ordinance, that provision shall be deemed amended to so comply with such law or ordinance, and shall be construed in a manner so as to comply.
18. This lease shall be binding on the parties, their personal representatives, successors and assigns.
19. When used herein, the singular shall include the plural, and the use of any gender shall apply to both genders.

COUNCIL COMMUNICATION

Date: March 14, 2016	Agenda Item: 9bii	Subject: Paseo Lease Agreement – ZOMO (Second Reading)
Initiated By: Community Development Department		Staff Source: Darren Hollingsworth Economic Development Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

At the February 16, 2016, meeting Council amended the agreement to authorize a 3 year lease term at \$1/ square foot.

At the February 1, 2016, study session City Council discussed the paseo lease for ZOMO and recommended a 1 year lease for \$1 per square foot.

To initiate business retention, revitalization, and growth strategies.

Create economic vibrancy in downtown Englewood by activating public spaces.

RECOMMENDED ACTION

Staff recommends that City Council approve a bill for an ordinance, on second reading, approving ZOMO's paseo lease agreement for a portion of the City-owned property at 3449 South Broadway.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Zomo, an Asian-fusion restaurant, is opening adjacent to the west-side paseo and requesting a lease agreement for outside seating. Zomo is currently underway with tenant finish to upgrade the former El-Tepehuan Mexican Restaurant space at 3457 South Broadway.

Outside seating in the west-side paseo creates vibrancy in downtown Englewood by activating public spaces.

FINANCIAL IMPACT

The City will receive annual lease payments of \$332.00 from Zomo. Since it is the tenant's responsibility to maintain the leased premises, the City should not incur any cost for the maintenance during the term of the leases. Below is a summary of the lease terms for these lease agreements:

	Term	Square Feet	Annual Lease Amount
Zomo	April 2016 thru April 2019	332	\$332.00

LIST OF ATTACHMENTS

Proposed Bill for Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 9
INTRODUCED BY COUNCIL
MEMBER BARRENTINE/YATES

AN ORDINANCE AUTHORIZING A LEASE WITH ZOMO, LLC. FOR USE OF A PORTION OF THE REAL PROPERTY "THE PASEO" LOCATED AT 3449 SOUTH BROADWAY AS OUTDOOR SEATING FOR "ZOMO".

WHEREAS, the City owns property commonly known as the "Paseo" at 3449 South Broadway, Englewood, CO.; and

WHEREAS, the approval of this Ordinance will permit "ZOMO, LLC" Ryan Anderson and Alysia Davey to lease a portion of real property the "Paseo" located at 3449 South Broadway for outdoor seating for a three year period beginning on April 1, 2016 through April 1, 2019; and

WHEREAS, on February 16, 2016 the Englewood City Council moved to amend the lease from one year to three years; and

WHEREAS, the Englewood City Council finds that the leasing of a portion of that property the "Paseo" to ZOMO will enhance the usefulness and vitality of the Downtown Englewood Business area;

WHEREAS, this agreement will benefit and promote the welfare of the City of Englewood.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. A Lease with ZOMO, LLC. Ryan Anderson and Alysia Davey for use of a portion of real property the "Paseo" located at 3449 South Broadway as outdoor seating for "ZOMO" beginning on April 1, 2016 through April 1, 2019. A copy of the "Lease" is marked as "Exhibit A" and attached hereto.

Section 2. The Mayor is hereby authorized to sign and the City Clerk shall attest said Lease on behalf of the City of Englewood.

Introduced, read in full, amended and passed as amended on first reading on the 16th day of February, 2016.

Published by Title as an amended Bill for an Ordinance in the City's official newspaper on the 18th day of February, 2016.

Published as an amended Bill for an Ordinance on the City's official website beginning on the 17th day of February, 2016 for thirty (30) days.

Read by title as amended and passed on final reading on the 14th day of March, 2016.

Published by title as amended in the City's official newspaper as Ordinance No. ____, Series of 2016, on the 17th day of March, 2016.

Published by title as amended on the City's official website beginning on the 16th day of March, 2016 for thirty (30) days.

Joe Jefferson, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the amended Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2016.

Loucrishia A. Ellis

**LEASE OF CITY OWNED PROPERTY FOR OUTDOOR SEATING FOR
"ZOMO"**

This lease, dated _____, is between the CITY OF ENGLEWOOD, 1000 Englewood Parkway, Englewood, Colorado 80110, as Landlord and ZOMO, LLC., whose address is 3457 South Broadway, Englewood, CO 80113, as Tenant.

In consideration of the payment of the rent and the performance of the covenants and agreements by the Tenant set forth herein, the Landlord does hereby lease to the Tenant the following described premises situate in Arapahoe County, in the State of Colorado; the address of which is 3449 South Broadway, Englewood, Colorado 80113, more fully described as follows:

That portion of Lots 35 and 36 Block 1 Enwood Addition as defined in Exhibit A.

Said parcel contains approximately 332 square feet.

Said premises, with all the appurtenances, are leased to the Tenant from the date of April 1, 2016 - April 1, 2019, at and for a rental for the full term of one dollar per square foot with the payment in the amount of \$332.00 on approval of the Lease by Tenant. The rent shall be due on April 1 of each renewal year, payable at 1000 Englewood Parkway, Englewood, Colorado 80110 Attention: Finance Department, without notice.

THE TENANT, IN CONSIDERATION OF THE LEASING OF THE PREMISES AGREES AS FOLLOWS:

1. To pay the rent for the premises above-described, in advance.
2. To keep the improvements upon the premises including drainage, fences, wiring and lighting in good repair, all at Tenant's expense, and at the expiration of this lease to surrender the premises in the same condition as when the Tenant entered the premises, loss by fire, inevitable accident, and ordinary wear excepted. Tenant shall post a bond with the City in the amount of five thousand dollars (\$5,000.00) to secure the removal of improvements or repairs should the Tenant fail to surrender premises as described herein.
3. To keep the premises free and clear of ice and snow, and to keep the entire premises free from all litter, dirt, debris and obstructions; to keep the premises in a clean and sanitary condition as required by the ordinances of the city and county in which the property is situated.
4. To sublet no part of the premises, and not to assign the lease or any interest therein.

5. To use the premises only as seating for the adjoining premises at 3457 South Broadway and to use the premises for no purposes prohibited by the laws of the United States or the State of Colorado, or of the ordinances of the city or town in which said premises are located, and for no improper or questionable purposes whatsoever, and to neither permit nor suffer any disorderly conduct, noise or nuisance having a tendency to annoy or disturb any persons occupying adjacent premises.
6. To neither hold nor attempt to hold the Landlord liable for any injury or damage, either proximate or remote, occurring through or caused by the repairs, alterations, injury or accident to the premises, or adjacent premises, or other parts of the above premises not herein demised, or by reason of the negligence or default of the owners or occupants thereof or any other person, nor to hold the Landlord liable for any injury or damage occasioned by defective electric wiring, plumbing or storm water, nor shall said premises be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous, nor make any alterations to or changes in, upon, or about the premises without obtaining the written consent of the Landlord therefore.
7. To allow the Landlord to enter upon the premises at any reasonable hour.

IT IS EXPRESSLY UNDERSTOOD AND AGREED BETWEEN LANDLORD AND TENANT AS FOLLOWS:

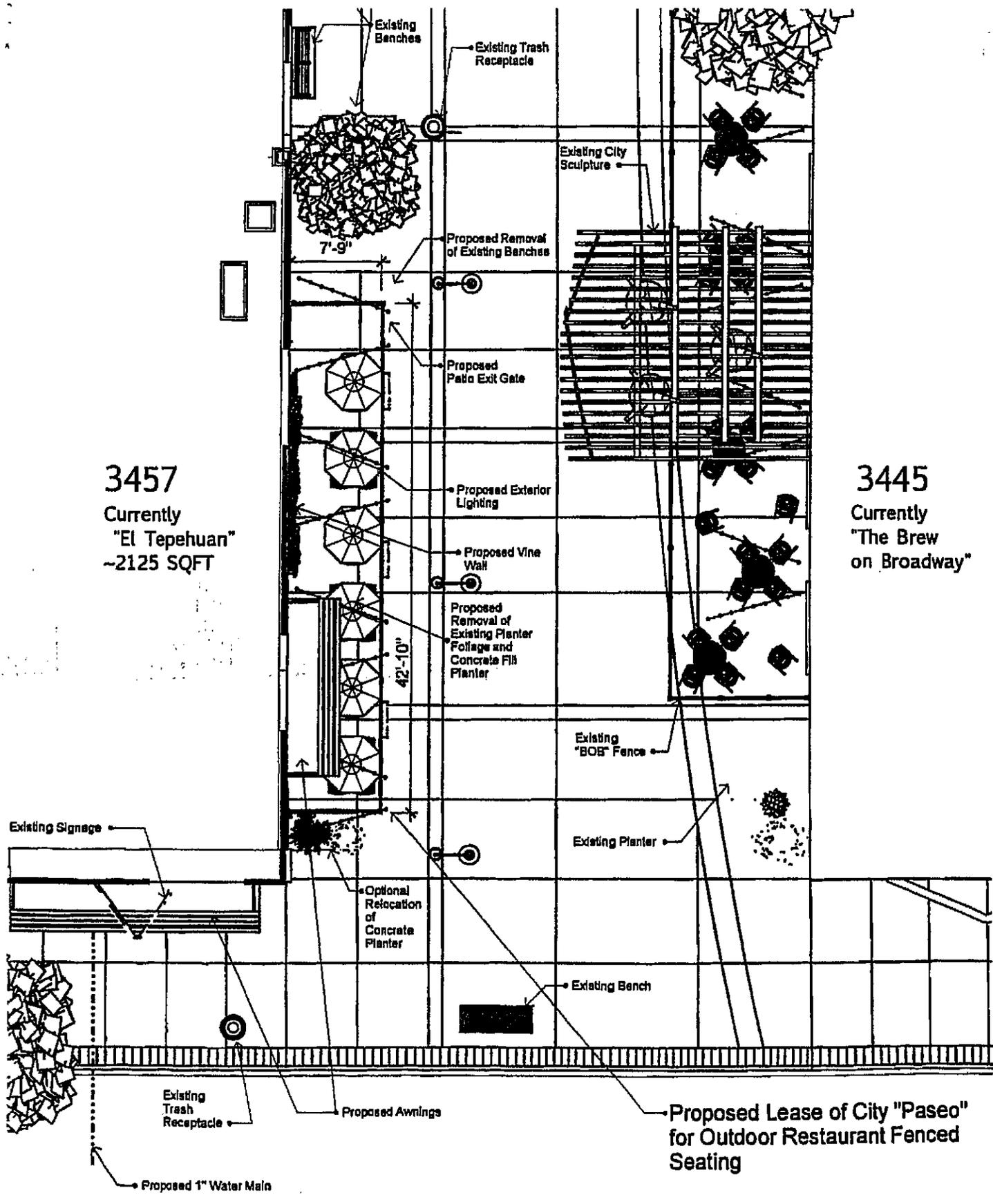
8. No assent, express or implied, to any breach of any one or more of the agreements hereof shall be deemed or taken to be a waiver of any succeeding or other breach.
9. If, after the expiration of this lease, the Tenant shall remain in possession of the premises and continue to pay rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to the last month's rent paid under this lease, and subject to all the terms and conditions of this lease.
10. If the premises are left vacant and any part of the rent reserved hereunder is not paid, then the Landlord may, without being obligated to do so, and without terminating this lease, retake possession of the said premises, making such changes and repairs as may be required, giving credit for the amount of rent so received less all expenses of such changes and repairs, and the Tenant shall be liable for the balance of the rent herein reserved until the expiration of the term of this lease.
11. At the Landlord's option, it shall be deemed a breach of this lease if the Tenant defaults (a) in the payment of the rent or any other monetary obligation herein; or (b) in the performance of any other term or condition of this lease. The Landlord may elect to cure such default and any expenses of curing may be added to the rent and shall become immediately due and payable.

In the event that the Landlord elects to declare a breach of this lease, the Landlord shall have the right to give the Tenant three (3) days written notice requiring payment of the rent or compliance with other terms or provisions of the lease, or delivery of the possession of the premises. In the event any default remains uncorrected after three (3) days written notice, the Landlord, at Landlord's option, may declare the term ended, repossess the premises, expel the Tenant and those claiming through or under the Tenant and remove the effects of the Tenant, all without being deemed guilty in trespass or of a forcible entry and detainer and without prejudice to any other remedies to which the Landlord may be entitled. If at any time this lease is terminated under this paragraph, the Tenant agrees to peacefully surrender the premises to the Landlord immediately upon termination, and if the Tenant remains in possession of the premises, the Tenant shall be deemed guilty of unlawful detention of the premises. The Landlord shall be entitled to recover from the Tenant all damages by reason of the Tenant's default, including but not limited to the cost to recover and repossess the premises, the expenses of reletting, necessary renovation and alteration expenses, commissions and the rent for the balance of the term of this lease.

12. In the event of any dispute arising under the terms of this lease, or in the event of non-payment of any sums arising under this lease and in the event the matter is turned over to an attorney, the party prevailing in such dispute shall be entitled, in addition to other damages or costs, to receive reasonable attorneys' fees from the other party.
13. In the event any payment required hereunder is not made within (10) days after the payment is due, a late charge in the amount of five percent (5%) of the payment will be paid by the Tenant.
14. In the event of a condemnation or other taking by any governmental agency, all proceeds shall be paid to the Landlord hereunder, the Tenant waiving all right to any such payments.
15. This lease is made with the express understanding and agreement that in the event the Tenant becomes insolvent, the Landlord may declare this lease ended, and all rights of the Tenant hereunder shall terminate and cease.
16. Tenant shall insure the premises for public liability and property damage in the sum of One Million Dollars with the City of Englewood as an additional insured.
17. Should any provision of this lease violate any federal, state or local law or ordinance, that provision shall be deemed amended to so comply with such law or ordinance, and shall be construed in a manner so as to comply.
18. This lease shall be binding on the parties, their personal representatives, successors and assigns.
19. When used herein, the singular shall include the plural, and the use of any gender shall apply to both genders.

3457
Currently
"El Tepehuan"
~2125 SQFT

3445
Currently
"The Brew
on Broadway"



COUNCIL COMMUNICATION

Date: March 14, 2016	Agenda Item: 9biii	Subject: IGA Amendment for Art Shuttle Cost Sharing- 2 nd Reading
Initiated By: Community Development Department		Staff Source: Harold J. Stitt, Senior Planner

PREVIOUS COUNCIL ACTION

Council approved an Intergovernmental Agreement (IGA) between the City and the Regional Transportation District (RTD) for funding of the Englewood Circulator Shuttle by Ordinance 50, Series of 2004, by Ordinance 66, Series of 2007, by Ordinance 10, Series of 2008, by Ordinance 8, Series of 2009, by Ordinance 4, Series of 2010, Ordinance 5, Series of 2011, by Ordinance 9, Series of 2012, by Ordinance 3, Series of 2013, by Ordinance 10, Series of 2014, and by Ordinance 5, Series of 2015. Council approved by Motion, in August 2004, a contract for transit services with Laidlaw Transit Services and subsequently extended this contract by Resolution No. 87, Series of 2005, by Resolution No. 77, Series of 2006, by Motion on December 3, 2007, by Motion on March 3, 2008, by Motion on April 6, 2009. Council approved by Motion on December 21, 2009, a contract for transit services with MV Transportation, Inc., and subsequently extended this contract by Motion on February 22, 2011, by Motion on March 5, 2012, by Motion on February 4, 2013, by Motion on March 17, 2014, and by Motion on February 2, 2015.

RECOMMENDED ACTION

Staff recommends Council adopt a bill for an ordinance, on second reading, authorizing the Second Amendment to the Intergovernmental Agreement between the City of Englewood and the Regional Transportation District (RTD) for cost sharing for operation of the art shuttle for 2016.

BACKGROUND AND ANALYSIS

In 2014, RTD added a provision to their standard Intergovernmental Agreement that provides for either party to amend the agreement (Paragraph 10H). For 2016 as in 2015, this allows for a simple amendment to the IGA stipulating the new funding amounts since all other provisions of the IGA will not change. Under this second amendment, the shuttle will continue to provide the current level of service operating every 15 minutes, Monday through Friday, 6:30 AM to 6:30 PM. RTD will reimburse the City 100% of all net operating costs as set forth in Exhibit B of the IGA less estimated farebox revenue. Net operating expenses exclude administrative costs, marketing and promotional materials cost. The total budget for 2016 shuttle operations as proposed by RTD is \$315,353 composed of operating expenses of \$266,834 and estimated fuel costs of \$48,519. As with prior agreements, the City will also provide fuel to eliminate state and federal gasoline taxes, reducing fuel costs. The City will reimburse RTD an amount equal to the farebox revenue that would have been collected had the shuttle operated as a fare service rather than free service. The amount of the compensation was determined through a survey of riders conducted in October 2015. The survey results indicated the number of riders that did not have a

bus pass or transfer and would be subject to the standard, reduced senior or student fare. For calendar year 2016, the estimated farebox revenue amount is \$79,531.

FINANCIAL IMPACT

RTD will reimburse the City for all contract and fuel costs less the farebox revenue fare amount. For the contract period the estimated farebox revenue amount is \$79,531 and is included in the approved 2016 Community Development Department budget. The contract continues the same level of service operating Monday through Friday, 6:30 am to 6:30 pm at no cost to riders.

ATTACHMENTS

2016 IGA Amendment

Bill for an Ordinance

Art Shuttle Ridership Report

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 10
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE AUTHORIZING A SECOND AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT AMENDING THE "ART" SHUTTLE COST SHARING INTERGOVERNMENTAL AGREEMENT BETWEEN THE REGIONAL TRANSPORTATION DISTRICT AND THE CITY OF ENGLEWOOD.

WHEREAS, Council has approved Intergovernmental Agreements (IGA) between the City and the Regional Transportation District (RTD) for funding of the Englewood Circulator Shuttle from 2004 through 2014; and

WHEREAS, in 2014, RTD added a provision to their standard Intergovernmental Agreement that provides for either party to amend only the financial commitment under the agreement (Paragraph 10H), for 2015. This allows for a simple amendment to the IGA stipulating the new funding amounts since all other provisions of the IGA will not change, which the Englewood City Council authorized by the passage of Ordinance No. 5, Series of 2015; and

WHEREAS, in 2014, RTD added a provision to their standard Intergovernmental Agreement that provides for either party to amend only the financial commitment under the agreement (Paragraph 10H), for 2015. The passage of this ordinance allows for a simple Second Amendment to the IGA stipulating the new funding amounts since all other provisions of the IGA will not change; and

WHEREAS, the City will reimburse RTD in an amount equal to the local fares that would have been collected had the shuttle operated as a fare service rather than free service; and

WHEREAS, for calendar year 2016, the estimated lost fare amount equals \$79,531, which has been budgeted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the Second amendment to IGA entitled "Funding Agreement for RTD Funding of Local Transportation Services" (Englewood Art Shuttle) between the Regional Transportation District (RTD) and the City of Englewood, Colorado, as attached hereto as Exhibit A.

Section 2. The Mayor and City Clerk are authorized to execute and attest said Intergovernmental Agreement for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 16th day of February, 2016.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 18th day of February, 2016.

Published as a Bill for an Ordinance on the City's official website beginning on the 17th day of February, 2016 for thirty (30) days.

Read by title and passed on final reading on the 14th day of March, 2016.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2016, on the 17th day of March, 2016.

Published by title on the City's official website beginning on the 16th day of March, 2016 for thirty (30) days.

Joe Jefferson, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2016.

Loucrishia A. Ellis

SECOND AMENDMENT TO FUNDING AGREEMENT FOR RTD FUNDING OF LOCAL TRANSPORTATION SERVICES (ENGLEWOOD art SHUTTLE)

This Second Amendment to **FUNDING AGREEMENT FOR RTD FUNDING OF LOCAL TRANSPORTATION SERVICES (ENGLEWOOD art SHUTTLE)** ("Second Amendment") is hereby made by and between the Regional Transportation District ("RTD") and CITY OF ENGLEWOOD ("LOCAL ENTITY"). RTD and LOCAL ENTITY also may be referred to herein as a "Party" or collectively as the "Parties."

RECITALS

- A. RTD and LOCAL ENTITY entered into an agreement entitled **FUNDING AGREEMENT FOR RTD FUNDING OF LOCAL TRANSPORTATION SERVICES (ENGLEWOOD art SHUTTLE)** dated April 4, 2014 ("Agreement");
- B. Section 10.H of the Agreement provides that the Parties may amend the Agreement to account for changes in the RTD Funding by a written agreement;
- C. The Parties executed the First Amendment to the Agreement dated February 19, 2015, in order to provide the RTD Funding for 2015; and
- D. In accordance with Section 10.H, RTD and LOCAL ENTITY now desire to amend the Agreement in order to provide the RTD Funding for 2016.

Now, therefore, the Parties agree as follows:

AGREEMENT

- 1. Except as otherwise stated herein, all initially capitalized terms shall have the same meaning as set forth in the Agreement. If there is any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall control. As modified by this Amendment, the Agreement shall remain in full force and effect.
- 2. Exhibit B of the Agreement is stricken and replaced with the revised Exhibit B, which is attached hereto and incorporated by reference herein.
- 3. This Amendment shall become effective upon the last date executed by all Parties.

IN WITNESS WHEREOF, the Parties have duly executed this Amendment to the Agreement.

CITY OF ENGLEWOOD

REGIONAL TRANSPORTATION DISTRICT

By: _____

By: _____

Joe Jefferson
Mayor

David A. Genova
Interim General Manager & CEO

Date: _____

Date: _____

ATTEST:

By: _____

Loucrishia A. Ellis
City Clerk

APPROVED AS TO LEGAL
FORM for RTD:

By: _____
Jenifer Ross-Amato
Associate General Counsel

COUNCIL COMMUNICATION

Meeting Date: March 14, 2016	Agenda Item: 9ci	Subject: Tele-Works, Inc.
Initiated By: Utilities Department Staff	Staff Source: Tom Brennan, Director of Utilities	

PREVIOUS COUNCIL ACTION

On April 2, 2012, Council approved the purchase of the Tele-Works Services in the amount of \$103,750.00.

RECOMMENDED ACTION

The Utilities Department recommends Council approve a motion, approving the Tele-Works invoice in the amount of \$55,729.00.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Tele-Works system is used when customers pay their bills using a credit or debit card on-line under the www.inglewoodutilities.org site or using Englewood's automated telephone system. The attached invoice from Tele-Works, a Paymentus Company, will pay the license fee for using their software to interact with the Englewood's CIS Infinity billing system.

The Water & Sewer Board, at their February 9, 2016 meeting, recommended Council approval of this invoice.

FINANCIAL IMPACT

27% of Englewood's water, sewer and storm water bills are paid through Tele-Works. This percentage is increasing as more customers engage in modern technology. In the past fiscal year, \$5.8 million was collected through Tele-Works. This is a budgeted item, divided between the water, sewer and storm water funds. The \$55,729.00 is an annual subscription fee for the period of April 1, 2016, through March 31, 2017.

LIST OF ATTACHMENTS

Tele-Works, Inc. Invoice #8590

**WATER & SEWER BOARD
MINUTES**

FEBRUARY 9, 2016

Present: Moore, Lay, Habenicht, Oakley, Gillit, Jefferson, Yates, Wiggins, Roth

Absent: Oakley, Burns

Also present: Tom Brennan, Director of Utilities

The meeting was called to order at 5:05 p.m.

1. MINUTES OF THE NOVEMBER 10, 2015 MEETING.

The Board received the Minutes of the November 10, 2015 Water & Sewer Board Meeting.

Motion: To approve the November 10, 2016 Water & Sewer Board Minutes.

Moved: Lay **Seconded:** Habenicht

Ayes: All

Absent: Oakely, Burns

Motion carried.

2. DRAGON'S DEN – WATER LINE REPAIR – 900 E. JEFFERSON AVE.

The Board received a letter from Robert Pratt of the Sanctuary Christian Fellowship regarding the \$3,712.69 invoice that was sent for the water line repair to the Dragon's Den building at the corner of Clarkson and US 285. The Board also received an article from a Channel 4 interview dated November 2, 2016 featuring a representative from the church. They are requesting that the City waive the cost to shut off the water at the corp stop, splitting the cost of the invoice and a payment schedule over 37 months.

The Board also received a memo from Tom Brennan, Director of Utilities discussing the background and resolution of the Dragon's Den service line leak, which was the responsibility of the property owner. Mr. Brennan recommended accepting a payment plan to cover the cost of the work performed by the City.

Tom discussed the existing water service line replacement program with the Board.

Motion: To deny Sanctuary Christian Fellowship's request for waiving fees or reimbursement of expenses for their water service line leak, but to accept a payment plan of \$100 per month until the amount due for the City's repairs is paid.

Ayes: Moore, Lay, Habenicht, Gillit, Roth, Yates, Wiggins

Nays: Jefferson

Absent: Burns, Oakley

Motion carried.

3. 7203 S. OLIVE WAY – TED TORMEY – REIMBURSE LATE FEE.

The Board received a letter from Ted Tormey of 7203 S. Olive Way in Centennial, Colorado. Copies of bills and final notices were also included. Mr. Tormey discovered that he had not paid his 2013 or 2014 sewer bills, and had been added on to his property taxes. Mr. Tormey is asking that \$166.91 2015 in late fees be reimbursed.

Motion: Moore, Lay, Habenicht, Gillit, Jefferson, Roth, Yates, Wiggins

Ayes: All

Nays: None

Absent: Oakley, Burns

Motion carried.

4. ENGLEWOOD RESIDENTIAL FIRE SPRINKLER SYSTEMS

Cherry Hills Village requires a residential fire sprinkler system in new construction over 2,500 sq. ft. With this requirement, a larger domestic water service connection may be necessary to meet the municipal code. Cherry Hills Village Sanitation district's existing policy is to waive the additional sewage tap charges for the purpose of increasing the water tap for a fire sprinkler system.

The Board also received a memo dated January 25, 2016 from Tom Brennan, Director of Utilities, recommending that the City waive the additional sewer connection fee attributable to a larger water service line to accommodate a fire sprinkler system. It was noted that this would also apply to Englewood residents if it becomes code. The Board concurred that extra fees should not be charged to accommodate fire protection.

Motion: To approve waiving additional sewer connection fees to upgrade a water service line to accommodate a fire sprinkler system.

Moved: Lay Seconded: Gillit

Ayes: Moore, Lay, Habenicht, Gillit, Jefferson, Roth, Yates, Wiggins

Nays: None

Absent: Oakley, Burns

Motion carried.

5. SERVICE LINE REPLACEMENT POLICY.

The Board received a memo from Tom Brennan dated January 27, 2016 regarding a service line replacement policy. Utilities staff proposes no changes to the current Service Line Replacement Policy and will continue to replace all residential only service lines.

Motion: To continue the existing policy of replacing all residential only service lines.

Ayes: Moore, Lay, Habenicht, Gillit, Jefferson, Roth, Yates, Wiggins

Nays: None

Absent: Oakley, Burns

Motion carried.

6. WATER & SEWER BOARD MISSION STATEMENT.

Tom Brennan, Director of Utilities proposed the following mission statement:

“The City of Englewood Water and Sewer Board supports the Utilities Department’s commitment to provide the citizens of Englewood with an adequate supply of high quality water, and reliable distribution and collection systems. The Board is responsible for providing guidance, approving administrative policies and addressing citizen’s concerns and issues. The nine member board is made up of six volunteer Englewood

citizens and three City council appointees. Board members may serve three, six-year terms.”

The Board noted that they would like an additional phrase to the proposed mission stating that the Utilities Department, “provides water service at the lowest possible cost while protecting Englewood’s water rights.” Tom noted that Englewood spent \$750,000 last year to protect from losing Englewood’s water rights. A case involving the Upper Pierre Water Rights was reviewed.

The Board will review the amended mission statement at the next meeting.

7. TELEWORKS

The Tele-Works system is used when customers pay their bills using a credit or debit card on-line under the www.Englewoodutilities.org site or using Englewood’s automated telephone system. The attached invoice from Teleworks, a Paymentus Company, will pay the license fee for using their software to interact with Englewood’s CIS Infinity billing system.

Tom noted that the dollar amount makes it necessary to be submitted to Council.

Motion: To recommend Council approval of the Tele-Works invoice in the amount of \$55,729.00.

Moved: Yates Seconded: Habenicht

Ayes: Moore, Lay, Habenicht, Gillit, Jefferson, Roth, Yates, Wiggins

Nays: None

Absent: Oakley, Burns

Motion carried.

Mr. Gillit excused himself at 5:45 p.m.

8. RITE-AID

Tom Brennan, Director of Utilities, reviewed the progress of a construction project for Rite-Aid. The site is at 285 and Clarkson Street, which is the old Balley’s and Plaza de Medico locations. Owners will be moving the lot lines, and the proposed project will require moving the City Ditch. Vacation of Right-of-Way, granting a New Right-of-Way, and Grant of Temporary Construction License Agreement documents will be forthcoming for Water Board approval.

When the documents are approved by the City Attorney and signed by the property owners, being a future multi-development site consisting of Rite-Aid and Centrepointe Senior Living, time will be of the essence and a phone vote may be required.

The meeting adjourned at 6:05 p.m.

The next meeting will be held Tuesday, March 8, 2016 at 5:00 p.m. in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary

**WATER AND SEWER BOARD
PHONE VOTE**

February 23, 2016

A phone vote was conducted for the members of the Englewood Water and Sewer Board for the February 9, 2016 Water Board meeting. The Board also received a Council Communication for reconfiguring the City Ditch across 707 E. Jefferson Ave. to accommodate the future Rite-Aid site.

1. MINUTES OF THE FEBRUARY 9, 2016 WATER & SEWER BOARD MEETING.

Motion: To approve the February 9, 2016 Water and Sewer Board Minutes.

Moved: Habenicht **Seconded:** Moore

Ayes: Moore, Lay, Habenicht, Oakley, Gillit, Jefferson, Yates, Wiggins, Roth

Members not reached: None

Nays: None

Motion carried.

2. RITE-AID – 707 E. JEFFERSON AVE., EXCHANGE OF ROW, GRANT OF ROW AND GRANT OF TEMPORARY CONSTRUCTION LICENSE.

KRF 965 LLC purchased the former Bally's property located at 285 and Clarkson St. They are proposing to build a Rite-Aid store and reconfiguring the property for the most advantageous use of the site. KRF 965 submitted a request to exchange the existing 25' wide City Ditch right-of-way and will be establishing a new 25' wide City Ditch right-of-way to connect the replaced piping to the existing ditch. The Grant of Temporary

Construction License to KRF 965 LLC will allow construction during the right-of-way exchange.

Motion: To recommend Council approval of the Grant of Right-of-Way, Grant of Temporary Construction License and Exchange of Right-of-Way Agreement requested by KRF 965, LLC for construction of the Rite-Aid building at 707 E. Jefferson Ave.

Moved: Habenicht **Seconded:** Moore

Ayes: All

Nays: None

Motion carried.

The next meeting will be held March 9, 2016 at 5:00 p.m. in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary
Englewood Water & Sewer Board

Tele-Works, Inc.

A Paymentus Company

PO Box M

Blacksburg, VA 24063-1027

Invoice

Date	Invoice #
2/1/16	8590

Bill To
The City of Englewood Accounts Payable 1000 Englewood Pkwy Englewood, CO 80110-2373

P.O. No.	Terms	Due Date
	Net 60	4/1/16

Description	Contract Amount	Prior Amt Inv...	Current %	Amount
Summation360 Annual Subscription Fee for the period of April 1, 2016 through March 31, 2017				55,729.00

TWI has not invoiced for tax. The city/county will impute sales/use tax. Tax ID # 54-1398116	Total	\$55,729.00
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All pricing is in US dollars. Please make checks payable to Tele-Works, Inc.	Payments/Credits	\$0.00
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Phone #	Fax #	www.paymentus.com	Balance Due	\$55,729.00
(540) 953-2631	(540) 951-4016			

COUNCIL COMMUNICATION

Date March 14, 2016	Agenda Item 11ai	Subject Modification to the Budget Advisory Committee Ordinance
Initiated By Department of Finance and Administrative Services		Staff Source Eric A. Keck, City Manager

PREVIOUS COUNCIL ACTION

City Council and staff established Ordinance No. 16, Series of 2013 that amended Title 2 of the Englewood Municipal Code 2000 by adding a new Chapter 14 establishing a Budget Advisory Committee. This ordinance contained a sunset provision after three years. Council studied this matter at its 25 January 2016 Study Session.

RECOMMENDED ACTION

Staff recommends Council approve a bill for an ordinance approving that the sunset provision be extended to 31 May 2017; that the Section 2-14-2 be amended to remove a Council liaison; and that the Powers and Duties section reflect the accompanying amendments to the ordinance.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

At the November 2, 2015 Study Session, the Budget Advisory Committee met with City Council to discuss the Committee's roles and duties. The consensus of City Council during the study session was to establish the Budget Advisory Committee as a permanent committee.

At the December 15, 2015 and the January 19, 2016 Budget Advisory Committee meetings, the members reviewed and discussed changes to the existing ordinance language.

At the January 25, 2016 City Council Study Session, the Council reviewed and discussed the changes to the proposed Budget Advisory Committee's work on the ordinance and desired that the Budget Advisory Committee be extended for one year.

FINANCIAL IMPACT

The recommended changes do not have a financial impact to the City.

LIST OF ATTACHMENTS

Proposed changes to Ordinance No. 16, Series of 2013

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 11
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AMENDING TITLE 2, CHAPTER 14, OF THE ENGLEWOOD MUNICIPAL CODE 2000 PERTAINING TO THE BUDGET ADVISORY COMMITTEE.

WHEREAS, the City Council of the City of Englewood, Colorado established a Budget Advisory Committee by the passage of Ordinance No. 16, Series of 2013; and

WHEREAS, Title 2, Chapter 14, EMC contained a sunset provision which terminates the Budget Advisory Committee in three years unless City Council renews the Budget Advisory Committee; and

WHEREAS, the Englewood City Council has reviewed the Budget Advisory Committee, recommended some changes and wishes to extend the Committee until May 31, 2017.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 2, Chapter 14, of the Englewood Municipal Code 2000 to read as follows:

BUDGET ADVISORY COMMITTEE

2-14-1: Purpose.

The Budget Advisory Committee (BAC) is established by Council and the City Manager to advise the City on the development, implementation, and evaluation of the annual City Budget. Participation in Budget Advisory Committee is an opportunity not only to advise on the prioritization of how City tax dollars are spent, but also to advise policymakers in their decision-making process in an open and transparent process.

2-14-2: Composition and Membership.

The Committee will be comprised of five (5) members appointed by City Council, ~~and a non-voting Council liaison.~~

2-14-3: Terms of Members.

Members will be appointed to overlapping terms of three (3) years. The City Council shall make appointments to fill vacancies for unexpired terms.

2-14-4: Compensation.

- A. The members of the Committee shall serve without compensation.
- B. Reasonable expenses directly related to performing the duties of the Committee shall be allowed.

2-14-5: Powers and Duties.

The Budget Advisory Committee shall have the following powers and duties:

- A. The Committee shall meet at least once each month at a time to be established by the City Manager. The Budget Advisory Committee meetings shall be open to the public and recorded in the same manner as other boards and commissions.
- B. At the start of each budget year the City Manager shall meet with the Budget Advisory Committee and shall review projections of major revenue sources and expenditures.
- C. The City Manager and the Director of Finance and Administrative Services shall work with the Budget Advisory Committee to establish budget guidelines for the coming year.
- D. Each department shall present its budget to the Revenue and Budget, Manager, the Director of Finance and Administrative Services, the City Manager and Budget Advisory Committee. ~~Said meetings shall be open to the public and recorded in the same manner as other boards and commissions.~~
- E. Annual capital improvement recommendations shall be made only by the Planning and Zoning Commission as required by the Englewood Home Rule Charter not the Budget Advisory Committee.
- F. Once the budgets have been reviewed and have incorporated requests for new programs and/or personnel authorized by the City Manager, the Budget Advisory Committee shall submit a written report of its findings and recommendations (BAC Report) at least annually. ~~The BAC Report shall be delivered to Council prior to the public hearing regarding the budget.~~

2-14-6: Appointment of Officers and Adoption of Rules.

- A. The Committee shall organize, adopt administrative rules and procedures and elect from its members such officers as it shall deem necessary to accomplish its purposes. Officers

of the Committee shall be elected for one-year (1) terms. No officer shall serve in the same capacity for more than two (2) consecutive terms.

- B. The chairperson may appoint such standing or special sub-committees from the membership of the Committee as the Committee shall determine necessary or useful in carrying out its purposes and powers. The purpose, term and members of each sub-committee shall be determined by the chairperson.

2-14-7: Sunset Provision.

The Budget Advisory Committee and the provisions of Title 2, Chapter 14, shall terminate ~~in~~ ~~three (3) years~~ on May 31, 2017, unless the Committee and the provisions of Title 2, Chapter 14, are renewed by Council ordinance.

Introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 17th day of March, 2016.

Published as a Bill for an Ordinance on the City's official website beginning on the 16th day of March, 2016 for thirty (30) days.

Joe Jefferson, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date: March 14, 2016	Agenda Item: 11aii	Subject: Approval of an intergovernmental agreement (IGA) to cosponsor the SBA's Emerging Leaders Program
Initiated By: Community Development Department		Staff Source: Darren Hollingsworth Economic Development Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

To initiate business retention, revitalization, growth strategies and leverage City resources.

A goal of the Englewood's Economic Development Strategy is to fostering job education and training opportunities to enhance the skill level of Englewood's labor force.

RECOMMENDED ACTION

Staff recommends that City Council approve a bill for ordinance as a cosponsor of the Small Business Administration's (SBA) Emerging Leaders Program by waiving fees associated with the use of the Community Room. Englewood's support for this event will allow the SBA to host this event at Englewood Civic Center.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Emerging Leaders Program includes 14 executive training and peer-to-peer coaching sessions, which are slated to begin on March 4 and continue through October 18. The training component will provide approximately 20 small businesses with approximately 100 hours of intensive training over a seven month period.

FINANCIAL IMPACT

As cosponsor, the City of Englewood will provide an in-kind contribution of \$8,820. This represents a fee waiver for the use of the Community Room, which normally carries an hourly rate of \$210 for events of this nature. The direct cost for an attendant fee is \$15.00 per hour and covers staff time to clean and monitor the room. This expense is a non-cash expense that will be incurred by the Englewood Building Maintenance Division, but is expected to be limited to no more than \$630.00 in staff time.

The SBA may invite additional nongovernmental parties to participate in this agreement, but Englewood's in-kind contribution is fixed and defined in the agreement.

LIST OF ATTACHMENTS

Proposed Bill for Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 14
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT TO COSPONSOR THE UNITED STATES SMALL BUSINESS ADMINISTRATION COLORADO EMERGING LEADERS PROGRAM BETWEEN THE U.S. SMALL BUSINESS ADMINISTRATION, THE GREATER ENGLEWOOD CHAMBER OF COMMERCE AND THE CITY OF ENGLEWOOD.

WHEREAS, the U.S. SBA Emerging Leaders Program includes 14 executive training and peer-to-peer coaching sessions beginning April 4 and continue through October 18, 2016;

WHEREAS, the training component will provide approximately 20 small businesses with approximately 100 hours of intensive training over a 7 month period; and

WHEREAS, the training curriculum will focus on developing a winning business expansion strategy including information on access to new forms of capital and government contracting; and

WHEREAS, it is designed to support companies who have achieved local success and are ready for the next level of growth; and

WHEREAS, during each classroom session, participants will have the opportunity to network with one another and the instructors/guest speakers; and

WHEREAS, as cosponsor the City of Englewood will provide an in-kind contribution of \$8,820, by providing an in-kind contribution which represents a fee waiver for the \$210 hourly rental/ attendant fee for use of Englewood's Community Room; and

WHEREAS, the direct cost for an attendant fee is \$15.00 per hour and covers staff time to clean and monitor the room this expense is a non-cash expense to be limited to no more than \$630 in staff time; and

WHEREAS, the U.S. SBA may invite additional nongovernmental parties to participate in the agreement, but the City of Englewood's in-kind contribution is fixed and defined in the agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The Intergovernmental Agreement between the U.S. Small Business Administration, the Englewood Greater Chamber of Commerce and the City of Englewood to Cosponsor the United States Small Business Administration Colorado Emerging Leaders Program, attached hereto as "Exhibit A," is hereby accepted and approved by the Englewood City Council.

Section 2. The Mayor is hereby authorized to sign said Intergovernmental Agreement for and on behalf of the City of Englewood

Introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 17th day of March, 2016.

Published as a Bill for an Ordinance on the City's official website beginning on the 16th day of March, 2016 for thirty (30) days.

ATTEST:

Joe Jefferson, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Loucrishia A. Ellis

COSPONSORSHIP AGREEMENT

between

**U.S. Small Business Administration
Colorado District Office**

and

**City of Englewood,
Greater Englewood Chamber of Commerce
Colorado Small Business Development Center-Aurora SBDC
Bank of the West
First National Denver
MiCasa Women's Business Center
Colorado Enterprise Fund****Authorization No: # (To be Provided by SBA Headquarters)****1. Parties**

This cosponsorship agreement ("Agreement") is between the U.S. Small Business Administration ("SBA") and the following cosponsor(s) (individually a "Cosponsor" or collectively the "Cosponsors"):

(1) City of Englewood

Joe Jefferson, City Mayor
1000 Englewood Parkway Englewood, CO 80110
jjefferson@englewoodgov.org | 720-373-5639

City of Englewood's Mission: To promote and ensure a high quality of life, economic vitality, and a uniquely desirable community identity.

(2) Greater Englewood Chamber of Commerce

Randy Penn, Executive Director
3501 S. Broadway Englewood, CO 80113
randy@myenglewoodchamber.com | 303.789.4473

To Promote the Greater Englewood Business Community, To Develop strong Community Relationships, and To be a Voice for our Community

(3) Colorado Small Business Development Center

Aurora and South Metro Small Business Development Center
Kelly Manning, Director
1625 Broadway, Ste 1700 Denver, CO 80203
303.892.3840
www.coloradosbdc.org

The Colorado Small Business Development Center (SBDC) Network is dedicated to helping small businesses throughout Colorado achieve their goals by providing free confidential counseling and various training programs.

(4) Mi Casa-Women's Business Center

Elena Vasconez, Director of Business Development Programs
360 Acoma St. Denver, CO 80223
303.573.1302
info@MiCasaResourceCenter.org

The Mi Casa Women's Business Center offers entrepreneurial training, individual business counseling, technology training and networking opportunities to help aspiring entrepreneurs and emerging businesses achieve their goals.

(5) Colorado Enterprise Fund

Alisa Zimmerman, Director of Marketing and Communications
1888 Sherman Street, #530 Denver, CO 80203
303.860.0242
www.coloradoenterprisefund.org

Colorado Enterprise Fund (CEF)'s mission is to accelerate community prosperity by financing and supporting entrepreneurs and small businesses. CEF, the first non-profit lending institution in Colorado, offers loans to small businesses unable to get traditional bank financing.

(6) Accion Colorado

Brittany Woedl, Regional Senior Loan Officer
P.O Box 181367 Denver, CO 80218
720-376-9475 | 1-800-508-7624
www.accionco.org
bwoedl@accionco.org

Accion is an award-winning nonprofit organization dedicated to providing the tools individuals need to operate, grow or start their business. They increase access to business credit, make loans and provide training to help entrepreneurs realize their dreams and to help businesses thrive.

(7) First National Denver

Megan Sheehan, SBA Banker
1400 16th Street, Suite 250 Denver, CO 80202
303.962.8089 | msheehan@firstnationaldenver.com

For business leaders, entrepreneurs and individuals seeking a personalized banking experience, First National is committed to helping you thrive with the ideal combination of scale and a personalized, collaborative approach—providing trusted, expert financial solutions.

2. Purpose

The purpose of this Agreement is to describe the rights and responsibilities of each Cosponsor regarding the activity described below. The Agreement encompasses this document, all Attachments and applicable laws and regulations (15 U.S.C. 633 (h), 15 U.S.C. 636(j), 13 C.F.R. Part 106). Except as properly amended, this Agreement is the final and complete agreement of the Cosponsors. It does not authorize the expenditure of any funds, other than by express terms of this Agreement nor does it create special consideration by SBA regarding any other matter. This Agreement shall not limit any Cosponsor from participating in similar activities or arrangements with other entities.

3. Cosponsored Activity

- a) Name of activity/event(s): Emerging Leaders Program
- b) Date(s): To be determined: April 2016 - October 2016
- c) Place: City of Englewood – Civic Center
- d) Estimated Number of Attendees: 20
- e) Estimated in-kind and Direct Cost of Cosponsored Activity: ~~XXXX~~
- f) Summary of event/activity: The Cosponsors will cosponsor Emerging Leaders initiative activities to include executive training and peer-to-peer coaching sessions. The training component will provide approximately 20 small businesses with approximately 100 hours of intensive training over a seven month period. The training curriculum will focus on developing a winning business expansion strategy including information on access to new forms of capital and government contracting. It is designed to support companies who have achieved local success and are ready for the next level of growth. During each classroom session, participants will also have the opportunity to network with one another and the instructors/guest speakers.

4. Cosponsors' Responsibilities

The Cosponsors agree that each will do the following in support of the cosponsored activity:

(a) SBA will:

- Coordinate over all planning and marketing of the cosponsored activity
- Provide course instructors (directly or through contract)
- Coordinate and process registration of small business participants
- Coordinate training logistics
- Provide attendees with copies of the training curriculum and any other required course materials
- Provide printing of all marketing and registration materials
- Market the training availability to interested small business executives
- Coordinate national and local media

(b) (Cosponsors) will:

Cosponsors agree to assist with marketing, outreach, recruitment of small business participation and to participate in agreed upon classes and venue location for the Emerging Leaders program. Upon completion of the program, assistance will be required to host a small graduation ceremony;

**City of Englewood
Greater Englewood Chamber of Commerce**

Colorado Small Business Development Center – Aurora and South Metro SBDC
Colorado Enterprise Fund
First National Denver Bank
Mi Casa-Women's Business Center
Accion Colorado

5. Budget and Fees

A budget showing estimated direct costs and anticipated sources of funds is attached and will be followed to the extent practicable (Attachment A).

The Cosponsors agree that no fees will be charged to participants for the cosponsored activities outlined in this Agreement.

6. Appropriate Recognition

Each Cosponsor will be given appropriate recognition for cosponsorship of the activity outlined in this Agreement, however such recognition does not constitute an express or implied endorsement by SBA of any of the opinions, products or services of any Cosponsor, its subsidiaries or its contractors. As such, all appropriate disclaimers and authorization numbers will be visible on all Cosponsored Materials. SBA has the right to determine what constitutes appropriate recognition, in its reasonable discretion.

7. Cosponsored Material

Cosponsored material refers to all print and electronic materials used to promote the cosponsored activity or material used during or as the cosponsored activity. This includes, but is not limited to, flyers, brochures, mailers, email promotional pieces, web pages, cosponsored promotional items, or any other physical, print or electronic item bearing SBA's name or logo.

8. Use of SBA Logo

Each Cosponsor agrees to only use its name and logo in connection with SBA's on Cosponsored Materials or in factual publicity for the cosponsored activity. Factual publicity includes dates, times, locations, purposes, agendas, fees and speakers involved with the activity. Any materials, print or electronic, bearing SBA's logo must include the appropriate disclaimers as outlined in paragraph 9 and be approved in advance by SBA's Responsible Program Official.

9. Disclaimers

All cosponsored materials, print or electronic, bearing the SBA name or logo must be approved in advance by SBA's Responsible Program Official and contain the following statement(s):

- a. Cosponsorship Authorization #(To Be Provided by SBA): SBA's participation in this cosponsored activity is not an endorsement of the views, opinions, products or services of any cosponsor or other person or entity. All SBA programs and services are extended to the public on a nondiscriminatory basis.
- b. Reasonable arrangements for persons with disabilities will be made if requested at least two weeks in advance. Contact: E-mail: sarah.hughes@sba.gov | 303.844.6505

10. Points of Contact

The respective Points of Contact for this Cosponsorship will be as following:

City of Englewood

Darren Hollingsworth, Economic Development Manager
dhollingsworth@englewoodgov.org | 303.762.2599

Greater Englewood Chamber of Commerce

Nancy Byers, Board Member
nbconsulting@comcast.net | 303.619.1309

Accion Colorado

Brittany Woedl, Regional Senior Loan Officer
bwoedl@accionco.org | 720.376.9475

Colorado Enterprise Fund

Alisa Zimmerman, Director of Marketing and Communications
Alisa@coloradoenterprisefund.org | 303.860.0242

Colorado Small Business Development Center

Charles Hahn, Small Business Specialist
chahn@auroragov.org | 303.326.8692

First National Denver

Megan Sheehan, SBA Banker
msheehan@firstnationaldenver.com | 303.962.8089

Mi Casa-Women's Business Center

Elena Vasconez, Director of Business Development Programs
evasconez@micasaresourcecenter.org | 303.573.1302

SBA local contact name: Sarah Hughes, 303.844.6505 and sarah.hughes@sba.gov

this individual will facilitate contact between the Co-sponsors to plan, organize and execute the activity(s) contemplated in this Agreement.

11. Term, Amendment and Termination

This Agreement will take effect upon signature of all Cosponsors and will remain in effect through December 31, 2016. This Agreement can only be amended in writing. Any Cosponsor may terminate its participation in the activity upon 30 calendar days advance written notice to the other Cosponsors. Such termination will not require changes to materials already produced, and will not entitle the terminating cosponsor to a return of funds or property contributed.

12. Additional Cosponsors

The Cosponsors agree that other entities may join this Agreement as Additional Cosponsors to help plan, market and participate in the activity. The Cosponsors agree that Additional Cosponsors may join this Agreement upon execution of a Joinder Agreement (see Attachment B). The Cosponsors agree that SBA may execute all Joinder Agreements with Additional Cosponsors on behalf of all Cosponsors.

13. Political Speech

It is SBA's policy that public officials or candidates for public office (including their staff), whether a direct cosponsor or invitee of a cosponsor, be informed by the SBA that they may not include political comment as part of their participation. Political comment includes speech or remarks designed to facilitate, or be directed toward, the success or failure of a political party, candidate for public office, or political group.

14. Signature

Each of the persons signing this Agreement represents that he/she has the authority to enter into this Agreement on behalf of the entity involved.

SBA

Brian T. Weiss
Associate Administrator
Communications and Public Liaison

Date

Edward J. Cadena
District Director
Colorado District Office

Date

City of Englewood

Joe Jefferson, City Mayor

Date

Greater Englewood Chamber of Commerce

Randy Penn, Executive Director

Date

Attachment A – Proposed Budget

DIRECT EXPENSES

Course Delivery/Instructors (Contract)

CASH
\$40,000

Estimated In- Kind

Facilities Rental

\$8,820

Waive the \$210 hourly rental / attendant fee for the use of Englewood's Community Room to host the in-person 14-week sessions of Emerging Leaders Program.

Food/Refreshments

Open House & Graduation Event

Guest Speakers

**TOTAL
EXPENSE**

\$40,000

\$8,820

SOURCE OF INCOME

SBA

CASH
\$40,000

Estimated In- Kind

City of Englewood

\$8,820

Greater Englewood Chamber of
Commerce

Colorado Enterprise Fund

First National Denver

Accion Colorado

Mi Casa-Women's Business Center

Colorado SBDC

COUNCIL COMMUNICATION

Meeting Date: March 14, 2016	Agenda Item: 11aiii	Subject: Vacation/Dedication of a portion of Alley East of 3400 South Broadway.
Initiated By: Public Works Department		Staff Source: Dave Henderson, Deputy Public Works Director

PREVIOUS COUNCIL ACTION

Ordinance No. 61, Series of 2013, authorizing the sale of 3415 South Broadway to the Englewood Urban Renewal Authority (EURA) was passed on final reading on November 4, 2013. Staff discussed this proposed Vacation and Dedication at the February 8, 2016 Study Session.

RECOMMENDED ACTION

Staff recommends Council approve a bill for an ordinance authorizing the vacation of a portion of the alley east of 3400 South Acoma Street and the acceptance of a Transportation and Utility easement for public access to South Acoma Street.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Medici Communities, proposed developer of the Acoma Redevelopment sites, has requested the vacation of a portion of the alley east of 3400 South Acoma Street. In exchange, an easement will be dedicated by the Urban Renewal Authority providing public access to 3400 South Acoma Street.

Development plans for this site include the construction of approximately 11,000 square feet of retail/commercial space and 111 one and two bedroom apartment units.

To facilitate development, Public Works supports the vacation of the north 78.5 feet of the alley east of 3400 South Acoma Street for the following reasons:

- The north end of the existing alley does not have physical access to Englewood Parkway.
- Access to Englewood Parkway is not recommended due to the proximity to Broadway, as well as safety concerns.
- An easement will be dedicated to the public providing access to South Acoma Street.
- The developer will be responsible for constructing and maintaining the easement area.
- The developer will be responsible for relocating existing utilities in the vacated portion. Existing utilities include: storm sewer, sanitary sewer, phone, cable, gas, and electric.
- Englewood Utilities has approved conceptual plans for relocating sanitary, and storm lines.
- Private utilities provided letters supporting the proposed relocations.

- Development of the site will be enhanced by permitting a building to be constructed over the vacated portion of the alley.

Should the development not proceed, the documents include a reversion right where by the vacated portion of the alley would be returned to the City.

FINANCIAL IMPACT

No direct financial impact is associated with this vacation/dedication. Development of the site will improve the City's tax revenues.

LIST OF ATTACHMENTS

Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 13
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING THE VACATION OF THE NORTHERN 78.5 FEET OF THE ALLEY EAST OF THE 3400 BLOCK OF SOUTH ACOMA STREET AND DEDICATION OF A 125 FOOT TRANSPORTATION/UTILITY EASEMENT LOCATED IN A PORTION OF LOTS 5 AND 6, BLOCK 2 OF CITY GARDENS SUBDIVISION EAST OF THE 3400 BLOCK OF SOUTH ACOMA STREET BY THE ENGLEWOOD URBAN RENEWAL AUTHORITY TO THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the City Council of the City of Englewood authorized the sale of 3415 South Broadway to the Englewood Urban Renewal Authority (EURA) by the passage of Ordinance No. 61, Series of 2013; and

WHEREAS, representatives of Medici Communities, the proposed developer of the Acoma Redevelopment sites, has requested the vacation of a portion of the alley east of the 3400 block of South Acoma; and

WHEREAS, Medici Communities is the proposed developer of the Acoma Redevelopment sites, the plan includes the construction of approximately 11,000 square feet of retail/commercial space and 111 one and two bedroom apartment units; and

WHEREAS, in exchange for the vacation of the northern 78.5 feet of the existing alley, as set forth in Exhibit A, a new Transportation/Utility Easement will be dedicated by the Englewood Urban Renewal Authority (EURA) to the City of Englewood to provide public access to the 3400 block of South Acoma Street as set forth in Exhibit B; and

WHEREAS, there are existing Utility Easements throughout the properties; and

WHEREAS, EURA its successors and assigns shall provide access to the vacated alley for the purpose of maintaining the utilities therein, until such time as the utilities are moved to the new Transportation/Utility Easement; and

WHEREAS, these Utility Easements are located in the Alley running North and South in the 3400 Block of South Acoma Street subject to vacation; and

WHEREAS, potential Utility Easement users identified were Xcel Energy, Qwest Corporation d/b/a CenturyLink and the City of Englewood Utilities Department; and

WHEREAS, Xcel Energy and CenturyLink have no objection to vacation of the easements; and

WHEREAS, in the event EURA its successors or assigns fail to begin construction or utilize the vacated alley, such failure shall constitute abandonment, and said vacated alley shall revert to the City of Englewood.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado, hereby authorizes the Vacation of the Alley located East of the 3400 block of South Acoma Street as shown on Exhibit A, attached hereto.

Section 2. The City Council of the City of Englewood, Colorado, hereby authorizes the acceptance of the Dedication of a Transportation/Utility Easement located in Lots 5 and 6, Block 2 of the City Gardens Subdivision East of the 3400 block of South Acoma Street as shown on Exhibit B, to the City of Englewood from the Englewood Urban Renewal Authority in the City of Englewood attached hereto.

Section 3. The Mayor is hereby authorized to sign and the City Clerk shall attest said Exhibit B – Dedication of Transportation/Utility Easement for and on behalf of the City of Englewood.

Section 4. The Executive Director of the Englewood Urban Renewal Authority is hereby authorized to sign said Exhibit B – Dedication of Transportation/Utility Easement for and on behalf of the Englewood Urban Renewal Authority.

Introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 17th day of March, 2016.

Published as a Bill for an Ordinance on the City’s official website beginning on the 16th day of March, 2016 for thirty (30) days.

ATTEST:

Joe Jefferson, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Loucrishia A. Ellis

EXHIBIT A

A PARCEL OF LAND BEING A PORTION OF THE 18 FOOT WIDE PUBLIC ALLEY BETWEEN LOTS 44 THROUGH 47, INCLUSIVE, BLOCK 1, ENWOOD ADDITION AS FILED IN THE ARAPAHOE COUNTY CLERK AND RECORDER'S OFFICE AT PLAT BOOK 3, PAGE 40 AND LOTS 2 THROUGH 5, INCLUSIVE, BLOCK 2, CITY GARDENS AS FILED IN THE ARAPAHOE COUNTY CLERK AND RECORDER'S OFFICE AT PLAT BOOK 5, PAGE 38; SITUATED IN THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF ENGLEWOOD, COUNTY OF ARAPAHOE, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 1 OF EXHIBIT A AS DESCRIBED AT BOOK 4256, PAGE 139 AS FILED IN THE ARAPAHOE COUNTY CLERK AND RECORDER'S OFFICE; SAID POINT BEING ON THE WEST LINE OF SAID LOT 47; THENCE S00°08'12"W, ALONG THE WEST LINE OF SAID LOTS 47, 48, 45, AND 44, A DISTANCE OF 78.51 FEET TO THE SOUTHWEST CORNER OF SAID LOT 44; THENCE N89°51'51"W A DISTANCE OF 18.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 5; THENCE N00°08'12"E, ALONG THE EAST LINE OF SAID LOTS 5, 4, 3, AND 2, A DISTANCE OF 78.51 FEET TO A POINT ON THE EAST LINE OF SAID LOT 2; SAID POINT BEING THE SOUTHEAST CORNER OF PARCEL 2 OF EXHIBIT A AS DESCRIBED AT SAID BOOK 4256, PAGE 139; THENCE S89°52'08"E A DISTANCE OF 18.00 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 1,413 SQUARE FEET, 0.032 ACRES, MORE OR LESS.

THIS LEGAL DESCRIPTION WAS PREPARED BY:
DON LAMBERT, PLS 30830
FOR AND ON BEHALF OF Esi land surveying, llc

SHEET 1 OF 2

*Esi land
surveying, llc*

3531 S. Logan St. D-324
Englewood, CO 80113
Ph: 303-340-0113

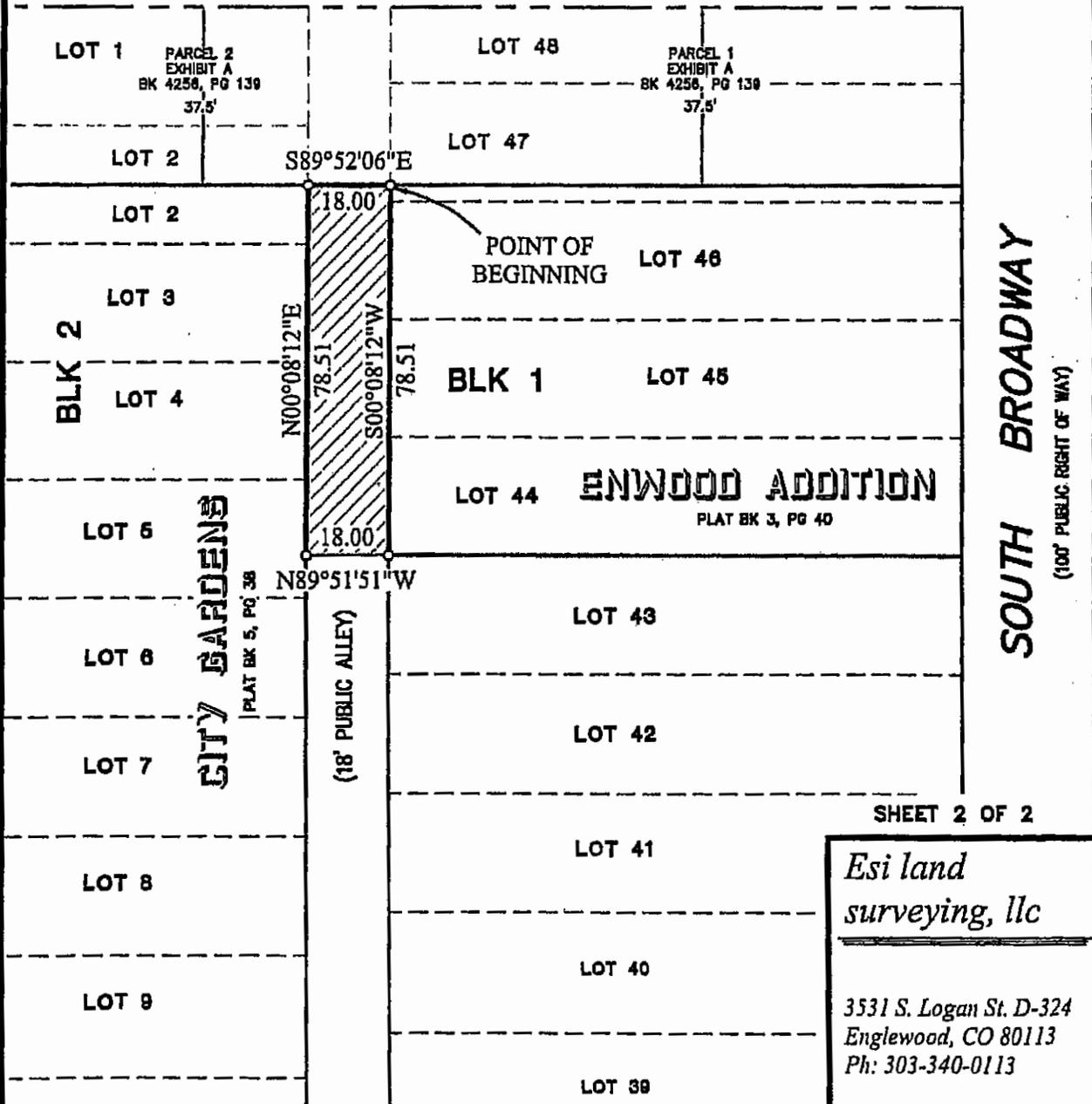
EXHIBIT A

Scale: 1" = 30'



WEST ENGLEWOOD PKWY.

(VARIABLE WIDTH PUBLIC RIGHT OF WAY)



*Esi land
surveying, llc*

3531 S. Logan St. D-324
Englewood, CO 80113
Ph: 303-340-0113

DEDICATION OF TRANSPORTATION/UTILITY EASEMENT

THIS DEDICATION OF A TRANSPORTATION/UTILITY EASEMENT IN A PORTION OF LOT 5 AND LOT 6 OF BLOCK 2 OF THE CITY GARDENS SUBDIVISION, EAST of the 3400 Block of South Acoma Street, Englewood, Colorado, made this _____ day of _____, 2016, by and between the ENGLEWOOD URBAN RENEWAL AUTHORITY (Grantor) and the CITY OF ENGLEWOOD, a municipal corporation of the State of Colorado, Englewood (Grantee).

WHEREAS, ENGLEWOOD URBAN RENEWAL AUTHORITY is, by warranty deed, fee owner of real property located in the County of Arapahoe, State of Colorado, as described in Exhibit B; and

WHEREAS, it is essential that Englewood have continuous and uninterrupted use of the Transportation/Utility Easement without interference from any other party; and

WHEREAS, any damage or interruption to the Transportation/Utility Easement would result in significant actual and consequential damages; and

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10) and other good and valuable ENGLEWOOD URBAN RENEWAL AUTHORITY, for itself, its successors and assigns, hereby GRANTS, BARGAINS, SELLS AND CONVEYS TO GRANTEE (CITY), ITS SUCCESSORS AND ASSIGNS, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AS FOLLOWS:

A Transportation/Utility Easement in a portion of Lot 5 and Lot 6 of Block 2 of the City Gardens Subdivision extending to the 3400 Block of South Acoma Street, described in Exhibit B attached hereto, "the Easement area";

1. Grantor warrants that it is the fee simple owner of the property described in Exhibit B and that Grantor has full right, title, and authority to grant the easement and right of way to Grantee. Grantee reserves the right to use the Easement Area for purposes not inconsistent with the grant herein.
2. Grantee shall not impair subjacent and lateral support of Grantor's property.
3. Each and every one of the benefits and burdens of this grant of easement shall inure to and be binding upon the parties hereto and their legal representatives, successors, and assigns.
4. Grantee does not relinquish any authority, rights, or privileges it may exercise as a Colorado home rule city.
5. This agreement supersedes any and all agreements, written or oral, heretofore entered into between the parties or their predecessors.

EXHIBIT B

Scale: 1" = 30'

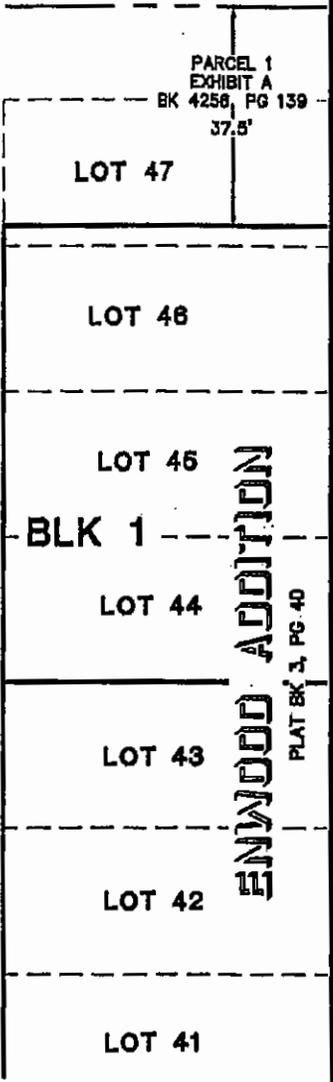
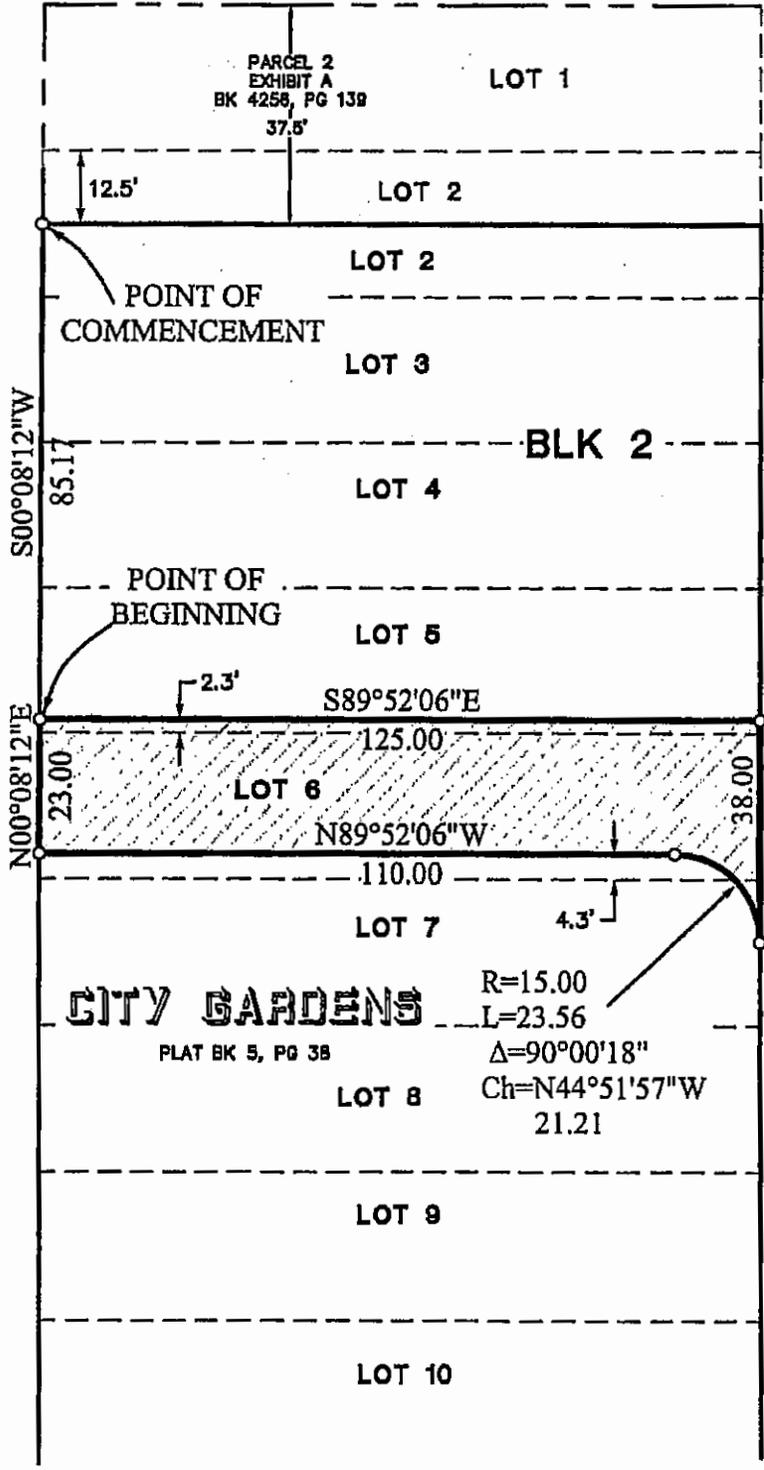


WEST ENGLEWOOD PKWY.

(VARIABLE WIDTH PUBLIC RIGHT OF WAY)

SOUTH ACOMA ST.

(50' PUBLIC RIGHT OF WAY)



(18' PUBLIC ALLEY)

SHEET 2 OF 2

Esi land surveying, llc

3531 S. Logan St. D-324
Englewood, CO 80113
Ph: 303-340-0113

EXHIBIT B

A PARCEL OF LAND BEING A PORTION OF PARCEL 1 OF THE LANDS DESCRIBED AT BOOK 4405, PAGE 663, RECEPTION NO. 2517132 AS FILED IN THE ARAPAHOE COUNTY CLERK AND RECORDER'S OFFICE; SAID PARCEL ALSO BEING A PORTION OF LOT 5 AND LOT 6, BLOCK 2 OF CITY GARDENS, A SUBDIVISION FILED IN THE ARAPAHOE COUNTY CLERK AND RECORDER'S OFFICE AT PLAT BOOK 5, PAGE 38; SITUATED IN THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF ENGLEWOOD, COUNTY OF ARAPAHOE, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL 1; SAID POINT BEING 37.5' SOUTHERLY OF THE NORTHWEST CORNER OF LOT 1, BLOCK 2 OF SAID CITY GARDENS; THENCE S00°08'12"W, ALONG THE WEST LINE OF SAID BLOCK 2, A DISTANCE OF 85.17 FEET TO A POINT ON THE WEST LINE OF SAID LOT 5; SAID POINT BEING THE POINT OF BEGINNING; THENCE S89°52'06"E A DISTANCE OF 125.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 5; THENCE S0D°08'12"W, ALONG THE EAST LOT OF SAID LOT 5 AND SAID LOT 6, A DISTANCE OF 38.00 FEET; THENCE ALONG A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS OF 15.00 FEET, AN ARC LENGTH OF 23.56 FEET, A CENTRAL ANGLE OF 90°00'18", AND A CHORD BEARING N44°51'57"W A DISTANCE OF 21.21 FEET; THENCE N89°52'06"W A DISTANCE OF 110.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 6; THENCE N0D°08'12"E, ALONG THE WEST LINE OF SAID LOT 6 AND SAID LOT 5, A DISTANCE OF 23.00 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 2,923 SQUARE FEET, 0.067 ACRES, MORE OR LESS.

THIS LEGAL DESCRIPTION WAS PREPARED BY:
DON LAMBERT, PLS 30830
FOR AND ON BEHALF OF Esi land surveying, llc

SHEET 1 OF 2

*Esi land
surveying, llc*

3531 S. Logan St. D-324
Englewood, CO 80113
Ph: 303-340-0113

COUNCIL COMMUNICATION

Meeting Date: March 14, 2016	Agenda Item: 11aiv	Subject: Rite-Aid - 707 E. Jefferson Ave., Exchange of ROW, Grant of ROW and Grant of Temporary Construction License
Initiated By: Utilities Department	Staff Source: Tom Brennan, Director of Utilities	

PREVIOUS COUNCIL ACTION

None

RECOMMENDED ACTION

The Utilities staff recommends Council approve a bill for an ordinance approving the Grant of Right of Way, Grant of Temporary Construction License and Exchange of Right of Way Agreement requested by KRF 965, LLC for construction of the Rite-Aid building.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

KRF 965 LLC purchased the former Bally's property located at 285 and Clarkson St. They are proposing to build a Rite-Aid store and reconfiguring the property for the most advantageous use of the site. KRF 965 submitted a request to exchange the existing 25' wide City Ditch right of way and will be establishing a new 25' wide City Ditch right of way to connect the replaced piping to the existing ditch. The Grant of Temporary Construction License allows construction during the right of way exchange.

The Englewood Water Board, at their February 9, 2016 meeting, approved the Grant of Right of Way, Exchange of Right of Way Agreement and Grant of Temporary Construction License to KRF 965 LLC.

FINANCIAL IMPACT

Exchanging the existing City Ditch right-of-way and the construction for rerouting the City Ditch into the new right of way will be done at the sole expense and liability of the licensee, KRF 965 LLC.

LIST OF ATTACHMENTS

Bill for Ordinance

Grant of Right of Way, Grant of Temporary Construction License, Exchange of Right of Way Agreement.

**WATER & SEWER BOARD
MINUTES**

FEBRUARY 9, 2016

Present: Moore, Lay, Habenicht, Oakley, Gillit, Jefferson, Yates, Wiggins, Roth

Absent: Oakley, Burns

Also present: Tom Brennan, Director of Utilities

The meeting was called to order at 5:05 p.m.

1. MINUTES OF THE NOVEMBER 10, 2015 MEETING.

The Board received the Minutes of the November 10, 2015 Water & Sewer Board Meeting.

Motion: To approve the November 10, 2016 Water & Sewer Board Minutes.

Moved: Lay Seconded: Habenicht

Ayes: All

Absent: Oakely, Burns

Motion carried.

2. DRAGON'S DEN – WATER LINE REPAIR – 900 E. JEFFERSON AVE.

The Board received a letter from Robert Pratt of the Sanctuary Christian Fellowship regarding the \$3,712.69 invoice that was sent for the water line repair to the Dragon's Den building at the corner of Clarkson and US 285. The Board also received an article from a Channel 4 interview dated November 2, 2016 featuring a representative from the church. They are requesting that the City waive the cost to shut off the water at the corp stop, splitting the cost of the invoice and a payment schedule over 37 months.

The Board also received a memo from Tom Brennan, Director of Utilities discussing the background and resolution of the Dragon's Den service line leak, which was the responsibility of the property owner. Mr. Brennan recommended accepting a payment plan to cover the cost of the work performed by the City.

Tom discussed the existing water service line replacement program with the Board.

Motion: To deny Sanctuary Christian Fellowship's request for waiving fees or reimbursement of expenses for their water service line leak, but to accept a payment plan of \$100 per month until the amount due for the City's repairs is paid.

Ayes: Moore, Lay, Habenicht, Gillit, Roth, Yates, Wiggins

Nays: Jefferson

Absent: Burns, Oakley

Motion carried.

3. 7203 S. OLIVE WAY – TED TORMEY – REIMBURSE LATE FEE.

The Board received a letter from Ted Tormey of 7203 S. Olive Way in Centennial, Colorado. Copies of bills and final notices were also included. Mr. Tormey discovered that he had not paid his 2013 or 2014 sewer bills, and had been added on to his property taxes. Mr. Tormey is asking that \$166.91 2015 in late fees be reimbursed.

Motion: Moore, Lay, Habenicht, Gillit, Jefferson, Roth, Yates, Wiggins

Ayes: All

Nays: None

Absent: Oakley, Burns

Motion carried.

4. ENGLEWOOD RESIDENTIAL FIRE SPRINKLER SYSTEMS

Cherry Hills Village requires a residential fire sprinkler system in new construction over 2,500 sq. ft. With this requirement, a larger domestic water service connection may be necessary to meet the municipal code. Cherry Hills Village Sanitation district's existing policy is to waive the additional sewage tap charges for the purpose of increasing the water tap for a fire sprinkler system.

The Board also received a memo dated January 25, 2016 from Tom Brennan, Director of Utilities, recommending that the City waive the additional sewer connection fee attributable to a larger water service line to accommodate a fire sprinkler system. It was noted that this would also apply to Englewood residents if it becomes code. The Board concurred that extra fees should not be charged to accommodate fire protection.

Motion: To approve waiving additional sewer connection fees to upgrade a water service line to accommodate a fire sprinkler system.

Moved: Lay Seconded: Gillit

Ayes: Moore, Lay, Habenicht, Gillit, Jefferson, Roth, Yates, Wiggins

Nays: None

Absent: Oakley, Burns

Motion carried.

5. SERVICE LINE REPLACEMENT POLICY.

The Board received a memo from Tom Brennan dated January 27, 2016 regarding a service line replacement policy. Utilities staff proposes no changes to the current Service Line Replacement Policy and will continue to replace all residential only service lines.

Motion: To continue the existing policy of replacing all residential only service lines.

Ayes: Moore, Lay, Habenicht, Gillit, Jefferson, Roth, Yates, Wiggins

Nays: None

Absent: Oakley, Burns

Motion carried.

6. WATER & SEWER BOARD MISSION STATEMENT.

Tom Brennan, Director of Utilities proposed the following mission statement:

“The City of Englewood Water and Sewer Board supports the Utilities Department’s commitment to provide the citizens of Englewood with an adequate supply of high quality water, and reliable distribution and collection systems. The Board is responsible for providing guidance, approving administrative policies and addressing citizen’s concerns and issues. The nine member board is made up of six volunteer Englewood

citizens and three City council appointees. Board members may serve three, six-year terms.”

The Board noted that they would like an additional phrase to the proposed mission stating that the Utilities Department, “provides water service at the lowest possible cost while protecting Englewood’s water rights.” Tom noted that Englewood spent \$750,000 last year to protect from losing Englewood’s water rights. A case involving the Upper Pierre Water Rights was reviewed.

The Board will review the amended mission statement at the next meeting.

7. TELEWORKS

The Tele-Works system is used when customers pay their bills using a credit or debit card on-line under the www.Englewoodutilities.org site or using Englewood’s automated telephone system. The attached invoice from Teleworks, a Paymentus Company, will pay the license fee for using their software to interact with Englewood’s CIS Infinity billing system.

Tom noted that the dollar amount makes it necessary to be submitted to Council.

Motion: To recommend Council approval of the Tele-Works invoice in the amount of \$55,729.00.

Moved: Yates Seconded: Habenicht

Ayes: Moore, Lay, Habenicht, Gillit, Jefferson, Roth, Yates, Wiggins

Nays: None

Absent: Oakley, Burns

Motion carried.

Mr. Gillit excused himself at 5:45 p.m.

8. RITE-AID

Tom Brennan, Director of Utilities, reviewed the progress of a construction project for Rite-Aid. The site is at 285 and Clarkson Street, which is the old Bailey’s and Plaza de Medico locations. Owners will be moving the lot lines, and the proposed project will require moving the City Ditch. Vacation of Right-of-Way, granting a New Right-of-Way, and Grant of Temporary Construction License Agreement documents will be forthcoming for Water Board approval.

When the documents are approved by the City Attorney and signed by the property owners, being a future multi-development site consisting of Rite-Aid and Centrepointe Senior Living, time will be of the essence and a phone vote may be required.

The meeting adjourned at 6:05 p.m.

The next meeting will be held Tuesday, March 8, 2016 at 5:00 p.m. in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary

WATER AND SEWER BOARD
PHONE VOTE

February 23, 2016

A phone vote was conducted for the members of the Englewood Water and Sewer Board for the February 9, 2016 Water Board meeting. The Board also received a Council Communication for reconfiguring the City Ditch across 707 E. Jefferson Ave. to accommodate the future Rite-Aid site.

1. MINUTES OF THE FEBRUARY 9, 2016 WATER & SEWER BOARD MEETING.

Motion: To approve the February 9, 2016 Water and Sewer Board Minutes.

Moved: Habenicht Seconded: Moore

Ayes: Moore, Lay, Habenicht, Oakley, Gillit, Jefferson, Yates, Wiggins, Roth

Members not reached: None

Nays: None

Motion carried.

2. RITE-AID – 707 E. JEFFERSON AVE., EXCHANGE OF ROW, GRANT OF ROW AND GRANT OF TEMPORARY CONSTRUCTION LICENSE.

KRF 965 LLC purchased the former Bally's property located at 285 and Clarkson St. They are proposing to build a Rite-Aid store and reconfiguring the property for the most advantageous use of the site. KRF 965 submitted a request to exchange the existing 25' wide City Ditch right-of-way and will be establishing a new 25' wide City Ditch right-of-way to connect the replaced piping to the existing ditch. The Grant of Temporary

Construction License to KRF 965 LLC will allow construction during the right-of-way exchange.

Motion: To recommend Council approval of the Grant of Right-of-Way, Grant of Temporary Construction License and Exchange of Right-of-Way Agreement requested by KRF 965, LLC for construction of the Rite-Aid building at 707 E. Jefferson Ave.

Moved: Habenicht Seconded: Moore

Ayes: All

Nays: None

Motion carried.

The next meeting will be held March 9, 2016 at 5:00 p.m. in the Community Development Conference Room.

Burrage
Recording Secretary
Englewood Water & Sewer Board

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 15
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING A GRANT OF TEMPORARY CONSTRUCTION LICENSE, A GRANT OF RIGHT-OF-WAY AND AN EXCHANGE OF RIGHT-OF-WAY AGREEMENT FOR RELOCATING THE CITY DITCH AT 707 EAST JEFFERSON AVENUE, ENGLEWOOD, COLORADO IN ORDER TO ALLOW FOR THE CONSTRUCTION OF A RITE AID PHARMACY.

WHEREAS, the KRF 965, LLC submitted a request to the City for the relocation of the City Ditch in order to construct a new building for a Rite Aid Pharmacy; and

WHEREAS, the existing 25' wide City Ditch Right-of-Way extends across and through property bordered by South Clarkson Street and South Washington Street; and

WHEREAS, KRF 965, LLC will relocate the existing 25' wide City Ditch Right-of-Way and City Ditch pipe to allow a building with the Exchange of Right-of-Way Agreement and the Grant of Right-of-Way Agreement; and

WHEREAS, the Grant of Temporary Construction License allows the work to commence; and

WHEREAS, the Englewood Water and Sewer Board recommended approval of the Grant of Right-of-Way, the Exchange of Right-of-Way, and the Grant of Temporary Construction License agreements for relocating the City Ditch at 707 East Jefferson Avenue, Englewood, Colorado at their February 9, 2016, meeting;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The Director of Utilities is hereby authorized to sign said Grant of Temporary Construction License for 707 East Jefferson Avenue, Englewood, attached hereto as Exhibit 1.

Section 2. The Mayor is hereby authorized to execute and the City Clerk to attest and seal for and on behalf of the City of Englewood the Exchange of Right-of-Way for 707 East Jefferson Avenue, Englewood, attached hereto as Exhibit 2.

Section 3. The City hereby accepts the Grant of Right-of-Way for 707 East Jefferson Avenue, Englewood, attached hereto as Exhibit 3.

Introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 17th day of March, 2016.

Published as a Bill for an Ordinance on the City's official website beginning on the 16th day of March, 2016 for thirty (30) days.

Joe Jefferson, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Loucrishia A. Ellis

GRANT OF TEMPORARY CONSTRUCTION LICENSE

THIS LICENSE AGREEMENT, made and entered into as of this 1st day of February, 2016, by and between the CITY OF ENGLEWOOD, a municipal corporation of the State of Colorado, herein referred to as the Grantor, and KRF 965, LLC, hereinafter referred to as "Licensee".

WHEREAS, the Grantor owns a certain right-of-way for the City Ditch; and

WHEREAS, Licensee desires to make certain improvements in the area relating to construction on the subject property and the Grantor agrees to give Licensee a Temporary Construction License for improvements which shall connect the new City Ditch piping to the existing City Ditch.

WITNESSETH: the Grantor, without any warranty of its title or interest whatsoever, hereby grants and authorizes Licensee the use of the property, hereinafter described, which Grantor now owns for the following improvements:

See attached Exhibit A for legal description.

See attached Exhibit B for construction improvements.

NOW, THEREFORE, it is agreed between Grantor and Licensee that Licensee shall be granted a construction license to make the improvements described in Exhibits A and B, subject to the following conditions:

1. Period of Construction. Licensee's right to use the construction license area depicted on Exhibits A and B shall begin no sooner than February 1, 2016 and shall terminate on February 1, 2017, and shall not thereafter be reinstated on a temporary basis without the express written consent of Grantor.
2. Restoration. The Licensee will do what is necessary to restore all of Grantor's property damaged or disturbed as a result of the project to as near its original condition as is practical, including but not limited to seeding on the City Ditch dedicated right-of-way.
3. Exercise of Reasonable Care. Licensee will use all reasonable means to prevent any loss or damage to Grantor or to others resulting from the construction.
4. As-Built Drawings. Licensee shall supply Grantor a map that shows the construction area and defines the construction site. See Exhibits A and B.
5. Assignment. Licensee's assignment of this Construction Agreement will not relieve Licensee of its obligations hereunder. The provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

6. Indemnification. Licensee, to the extent permitted by the laws and constitution of the State of Colorado, hereby agrees to be liable and hold harmless the City of Englewood, its employees, tenants and guests from any and all claims, causes of action and liability which may occur as a result of the negligent or wrongful acts of Licensee in the construction of the Project, including cost of defending against such claims.
7. Liability. Licensee hereby acknowledges that it understands that there is water flow in the City Ditch from April 1 to November 1 of each year and that it will assume liability for any damage to adjoining property caused by water flow resulting from damage to the City Ditch caused by the Licensee's construction of the new City Ditch or pipe.
8. Insurance. Licensee shall maintain in full force and effect a valid policy of insurance for the Project in the amount of \$1,000,000.00 property coverage and \$1,000,000.00 liability coverage. Licensee further agrees that all its employees, contractors, and sub-contractors working on the Project shall be covered by adequate Workers Compensation insurance.
9. Authority to Enter into Agreement. The undersigned represents that he is an authorized officer of Licensee and has authority to enter into this agreement on behalf of Licensee and that Licensee will accept and abide by all the terms and conditions hereof.

This Construction License shall terminate upon completion of said improvements and approval by Grantor.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first above written.

CITY OF ENGLEWOOD, COLORADO
GRANTOR:

By _____
Tom Brennan, Director of Utilities

KRF 965, LLC
LICENSEE:

By Jimmy Balafas, Chief Executive Officer

STATE OF COLORADO)
)ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 18 day of February 2016, by Jimmy Balafas as Chief Executive Officer of KRF 965, LLC.

My commission expires ~~05/20/2016~~ Commission Expires 05/20/2016

v

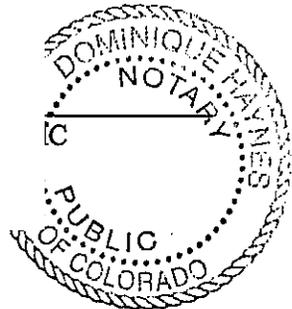


EXHIBIT "A"
CITY DITCH RIGHT-OF-WAY

LEGAL DESCRIPTION FOR CITY DITCH RIGHT-OF-WAY:

A PARCEL OF LAND LOCATED IN THE NORTHEAST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., BEING A PORTION OF LOTS 29 TO 34, A PORTION OF LOTS 16 TO 18 AND A PORTION OF THE VACATED ALLEY, BLOCK 1, HIGGINS ENGLEWOOD GARDENS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS 5.22 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT 29, WHENCE THE NORTHEAST CORNER OF SAID SECTION 3 BEARS N03°17'13"E, 561.13 FEET; THENCE N40°35'24"W, 15.50 FEET; THENCE N65°08'45"W, 9.46 FEET; THENCE N55°37'54"W, 14.94 FEET; THENCE N37°41'31"W, 45.11 FEET; THENCE N35°05'19"W, 24.56 FEET; THENCE N50°49'41"W, 7.28 FEET; THENCE N89°45'53"W, 186.16 FEET TO A POINT ON THE WEST LINE OF SAID LOT 18; THENCE N00°14'07"E ALONG SAID WEST LINE OF SAID LOT 18 AND SAID LINE EXTENDED, 50.41 FEET TO A POINT ON THE WEST LINE OF SAID LOT 16; THENCE S25°20'54"E, 28.17 FEET; THENCE S89°45'53"E, 182.83 FEET; THENCE S25°20'54"E, 28.17 FEET; THENCE S50°49'41"E, 19.57 FEET; THENCE S35°05'19"E, 27.44 FEET; THENCE S37°41'31"E, 40.60 FEET; THENCE S55°37'54"E, 8.91 FEET; THENCE S65°08'45"E, 7.08 FEET TO A POINT ON THE EAST LINE OF SAID LOT 31; THENCE S00°14'19"W ALONG SAID EAST LINE OF SAID LOT 31 AND SAID LINE EXTENDED, 34.59 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 7,656 SQUARE FEET OR 0.1758 ACRES MORE OR LESS.

BASIS OF BEARINGS: AN ASSUMED BEARING OF S00°13'03"W BEING THE EAST LINE OF THE NORTHEAST $\frac{1}{4}$ NORTHEAST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M. BETWEEN TWO FOUND MONUMENTS; ONE BEING A 1.5" DIAMETER STEEL AXLE AT THE NORTHEAST CORNER OF SAID SECTION AND THE OTHER BEING A 2" DIAMETER ALUMINUMCAP STAMPED LS #27011 IN A RANGE BOX AT THE SOUTHEAST CORNER OF THE NORTHEAST $\frac{1}{4}$ NORTHEAST $\frac{1}{4}$.

DAMIEN CAIN PLS 38284
FOR AND ON BEHALF OF
39 NORTH ENGINEERING AND SURVEYING LLC
4495 HALE PARKWAY
SUITE 305
DENVER, CO 80220

PREPARED BY:
39 NORTH ENGINEERING AND SURVEYING LLC
4495 HALE PARKWAY
SUITE 305
DENVER, CO 80220
PH: 303-325-5071
EMAIL: damien.cain@39north.net

EXHIBIT "A"

CITY DITCH RIGHT-OF-WAY

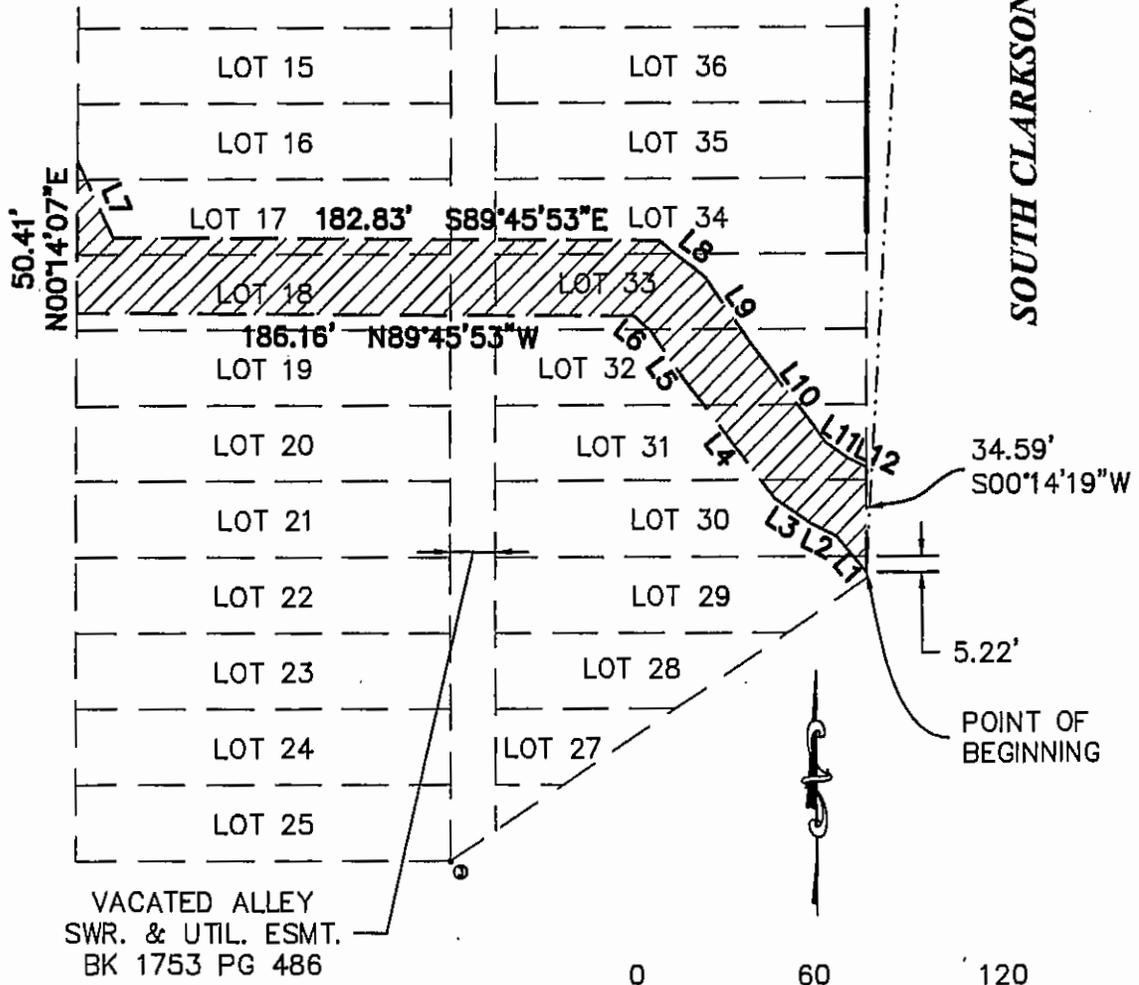
LINE TABLE		
LINE	LENGTH	BEARING
L1	15.50'	N40°35'24"W
L2	9.46'	N65°08'45"W
L3	14.94'	N55°37'54"W
L4	45.11'	N37°41'31"W
L5	24.56'	N35°05'19"W
L6	7.28'	N50°49'41"W
L7	28.17'	S25°20'54"E
L8	19.57'	S50°49'41"E
L9	27.44'	S35°05'19"E
L10	40.60'	S37°41'31"E
L11	8.91'	S55°37'54"E
L12	7.08'	S65°08'45"E

NORTHEAST CORNER
SEC. 3, T5S, R68W
FOUND 1.5" AXLE
IN RANGE BOX

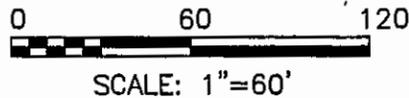


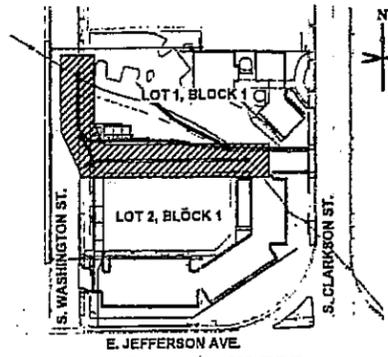
SOUTH WASHINGTON STREET
60' R.O.W.

SOUTH CLARKSON STREET

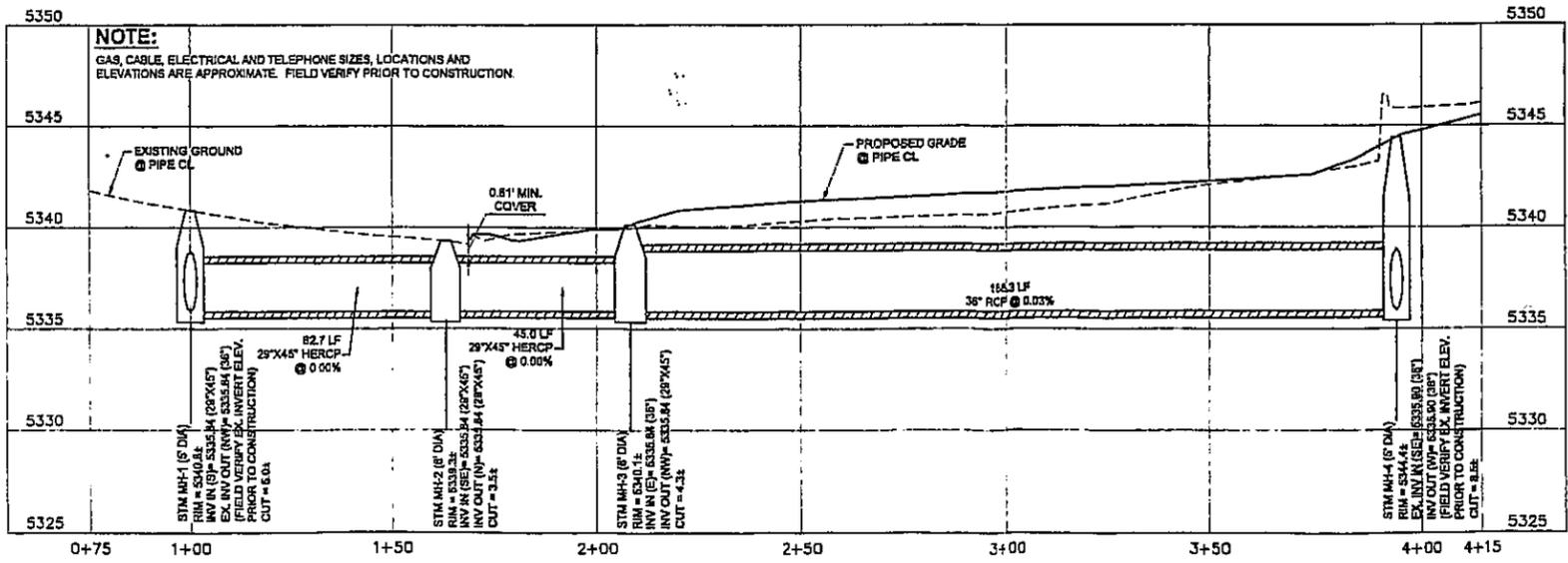
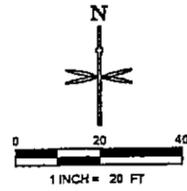
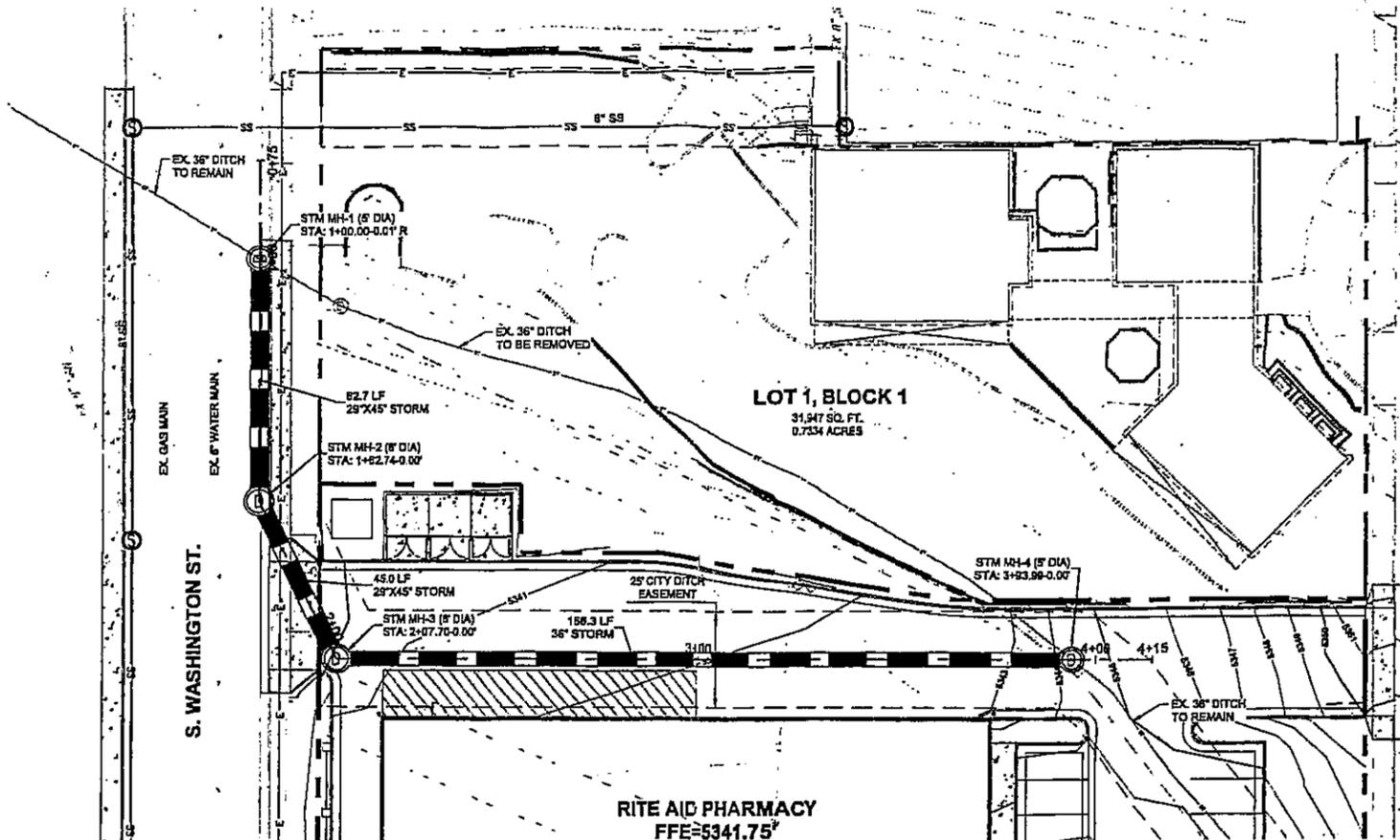


EAST JEFFERSON AVENUE
(HAMPDEN AVENUE BYPASS)





KEYMAP
SCALE 1" = 100'



PROFILE STM - DITCH (STA: 0+75 TO 4+15)
SCALES: 1"=20' HORIZONTAL, 1"=4' VERTICAL

LEGEND

- PROPOSED EASEMENT
- PROPERTY LINE
- PROPOSED BUILDING SETBACK
- PROPOSED BUILDING
- EXISTING CURB AND GUTTER
- PROPOSED 6" CURB AND GUTTER
- EXISTING WATER LINE
- EXISTING OVERHEAD ELECTRIC
- EXISTING STORM SEWER
- EXISTING SANITARY SEWER
- EXISTING GAS LINE
- PROPOSED WATER LINE
- PROPOSED SANITARY SEWER
- PROPOSED STORM SEWER LINE
- PROPOSED GAS LINE
- PROPOSED UNDERGROUND ELECTRIC
- PROPOSED STM & SAN. MANHOLES
- EXISTING STM & SAN. MANHOLES
- PROPOSED STORM INLET
- EXISTING STORM INLET
- PROPOSED FIRE HYDRANT
- EXISTING UTILITY POLE
- PROPOSED SITE LIGHTING

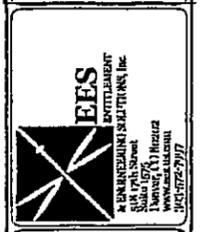
PROJECT BENCHMARK
NGS VERTICAL CONTROL POINT - W 408 (PID - KK1488) BEING A STAINLESS STEEL ROD IN 5" DIAMETER LOGO BOX AT THE SOUTHEAST CORNER OF SOUTH DOWNING STREET AND EAST JEFFERSON AVENUE. ELEV. = 5360.86 (NAVD 1988 DATUM)

811
Know what's below. Call before you dig.

CALL UTILITY NOTIFICATION CENTER OF COLORADO
1-800-922-1987 or 811

CALL 3-BUSINESS DAYS (NOT INCLUDING INITIAL DAY OF CONTACT) IN ADVANCE BEFORE YOU DIG, GRADE, OR EXCAVATE FOR THE MARKING OF UNDERGROUND MEMBER UTILITIES.

No.	REVISION	BY	DATE
0	ISSUED FOR WATER & SEWER BOARD APPROVAL	KMH	12/09/16



UTILITY PLANS
RITE AID #6773
ENGLEWOOD, CO
E. JEFFERSON AVE. (C/OOT 285) & CLARKSON ST.

UNDERGROUND DITCH PLAN & PROFILE

PROJECT NO:	KGR002.01
DESIGNED BY:	KMH
DRAWN BY:	KMH
DATE:	12/09/16
C4.4	
SHEET 5 OF 5	

EXCHANGE OF RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT made and entered into as of this 18th day of February, 2016, by and between the CITY OF ENGLEWOOD, a municipal corporation of the State of Colorado, herein referred to as "City", and KRF 965, LLC whose address is 1509 York Street #201, Denver, CO 80206; herein referred to as KRF 965, LLC.

WHEREAS, the City owns and operates an irrigation ditch known as the City Ditch for diverting water out of the Platte River under priorities pertaining to said ditch upon and along a Right-of-Way acquired therefore during and prior to 1860 and continuously used since that time; and

WHEREAS, KRF 965, LLC desires to use a portion of said Right-of-Way for construction of a Rite-Aid Pharmacy and other purposes not consistent with the Right-of-Way purposes; and desires to exchange approximately Two Hundred Ninety-Four feet (294') of new Right-of-Way for the use of the City Ditch, Attached herein as Exhibit A; in exchange for the City's permission and vacation of the existing City Ditch Right-of-Way, Attached herein as Exhibit B.

NOW THEREFORE:

For and in consideration of ten dollars (\$10.00) and other valuable consideration, the premises and the full performance of the obligations and promises set forth below, the sufficiency of which is expressly acknowledged, the parties hereto hereby agree as follows:

1. For the uses hereinafter named, KRF 965, LLC will grant to the City the following described property which is a parcel of land situated in the Northeast Quarter of Section 3, Township 5 South, Range 68 West of the 6th Principal Meridian, also being a part of Block 1, Higgins Englewood Gardens, City of Englewood, Arapahoe County, Colorado more particularly described as shown on Exhibit A attached hereto and incorporated herein.

Said parcel of land shall be twenty-five feet (25') in width where it crosses the subject property shown on the attached Exhibit B, lying 12.5 feet on each side of the "proposed centerline" of the relocated City Ditch. Which entire length shall be surveyed by KRF 965, LLC and evidenced by an executed deed for Right-of-Way with meets and bounds description as shown on attached Exhibit A.

2. Upon, over, through and across the strip of land hereinabove described, and as shown on attached Exhibit A, the City shall have the right to construct, reconstruct, maintain, alter, repair, enlarge, enclose and use a ditch or pipe for the conveyance of water under priorities pertaining to the above mentioned City Ditch, said priority having been originally adjudicated to said City Ditch under the name of the Platte Water Ditch, And for any and all other uses to which the City might have put the old Ditch has this Agreement not been made. The parties hereto agree that the primary right of possession of areas, which must be used in common by the two parties hereto, is in the City, for its Ditch. With this limitation, it is agreed that the City will use its best efforts to access and maintain the City Ditch with minimal disruption to KRF 965, LLC.

3. KRF 965, LLC will be granted a License to construct a new pipe to accommodate the required City Ditch water flow of the City Ditch Right-of-Way consistent with the professional engineer approved plans attached as Exhibit C consisting of one (1) page, located on their property also known as 707 East Jefferson Avenue, Englewood, Colorado.
4. KRF 965, LLC shall construct the piping for the City Ditch in the new location in accordance with and at the location shown on Exhibit C.
5. It is agreed that the present City Ditch is an old, well constructed, thoroughly compacted, and well sealed ditch from which a minimum of seepage loss occurs. KRF 965, LLC and the City agree that in all places where the City Ditch is to be altered in its course to a new location that it will reconstruct said new pipe section in such a way that the pipe when reconstructed will be as sound and efficient, will be reconstructed according to the plans and specifications shown on Exhibit C.
6. KRF 965, LLC agrees to hold the City harmless from any defects of construction work performed hereunder by the City and for damages ensuing on the operation of the City Ditch arising out of such construction or maintenance for the period of one (1) year after completion of the City Ditch construction.
7. All work to be done hereunder shall be performed to the entire satisfaction of the City of Englewood Director of Utilities.
8. All work on the City Ditch and in connection therewith shall be done in such a way as not to interfere with the regular and continuous flow of water therein.
9. Upon receipt of an acceptable Grant of Right-of-Way and acceptance by the City of the new piped section of the City Ditch, the City will quit claim any other rights to the City Ditch Right-of-Way inconsistent with the grant described in Paragraph 1 and as shown on Attachment B, attached hereto.
10. City requires access to maintain the City Ditch and KRF, LLC 965 agrees to execute an access agreement acknowledging the City's right to access the City Ditch Right-of-Way for City Ditch operation and maintenance and for storm flow operation and inspection. This access agreement will be included in the Grant of Right-of-Way.
11. In case RKF, LLC 965 shall fail, neglect, or refuse to fulfill any of the terms or the provisions of this Agreement, all rights hereunder in KRF, LLC 965 shall at once be forfeited to the City, and the City may repossess itself of its original Right-of-Way for said City Ditch as if this Agreement had never been made, and waiver by the City of Enforcement of its rights on account of any breach shall not be deemed to constitute a waiver of any subsequent breach.

12. The signatories affirm that they have authority to sign for KRF, LLC 965 described herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF ENGLEWOOD

ATTEST:

Joe Jefferson, Mayor

Loucrishia A. Ellis, City Clerk

KRF 965, LLC

✓
v v
By: Jimmy Balafas
Title: Chief Executive Officer

STATE OF COLORADO)
COUNTY OF Denver) ss.

The foregoing instrument was acknowledged before me this 18 day of February, 2016, by Jimmy Balafas as Chief Executive Officer of KRF 965, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

My Commission Expires: _____
My Commission Expires 05/28/21

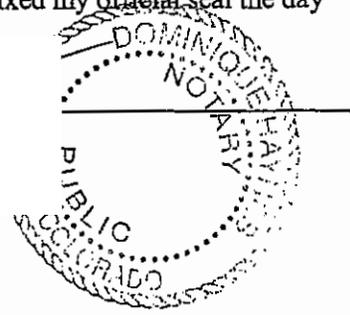


EXHIBIT "A"

CITY DITCH RIGHT-OF-WAY

LEGAL DESCRIPTION FOR CITY DITCH RIGHT-OF-WAY:

A PARCEL OF LAND LOCATED IN THE NORTHEAST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., BEING A PORTION OF LOTS 29 TO 34, A PORTION OF LOTS 16 TO 18 AND A PORTION OF THE VACATED ALLEY, BLOCK 1, HIGGINS ENGLEWOOD GARDENS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS 5.22 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT 29, WHENCE THE NORTHEAST CORNER OF SAID SECTION 3 BEARS N03°17'13"E, 561.13 FEET; THENCE N40°35'24"W, 15.50 FEET; THENCE N65°08'45"W, 9.46 FEET; THENCE N55°37'54"W, 14.94 FEET; THENCE N37°41'31"W, 45.11 FEET; THENCE N35°05'19"W, 24.56 FEET; THENCE N50°49'41"W, 7.28 FEET; THENCE N89°45'53"W, 186.16 FEET TO A POINT ON THE WEST LINE OF SAID LOT 18; THENCE N00°14'07"E ALONG SAID WEST LINE OF SAID LOT 18 AND SAID LINE EXTENDED, 50.41 FEET TO A POINT ON THE WEST LINE OF SAID LOT 16; THENCE S25°20'54"E, 28.17 FEET; THENCE S89°45'53"E, 182.83 FEET; THENCE S25°20'54"E, 28.17 FEET; THENCE S50°49'41"E, 19.57 FEET; THENCE S35°05'19"E, 27.44 FEET; THENCE S37°41'31"E, 40.60 FEET; THENCE S55°37'54"E, 8.91 FEET; THENCE S65°08'45"E, 7.08 FEET TO A POINT ON THE EAST LINE OF SAID LOT 31; THENCE S00°14'19"W ALONG SAID EAST LINE OF SAID LOT 31 AND SAID LINE EXTENDED, 34.59 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 7,656 SQUARE FEET OR 0.1758 ACRES MORE OR LESS.

BASIS OF BEARINGS: AN ASSUMED BEARING OF S00°13'03"W BEING THE EAST LINE OF THE NORTHEAST $\frac{1}{4}$ NORTHEAST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M. BETWEEN TWO FOUND MONUMENTS; ONE BEING A 1.5" DIAMETER STEEL AXLE AT THE NORTHEAST CORNER OF SAID SECTION AND THE OTHER BEING A 2" DIAMETER ALUMINUMCAP STAMPED LS #27011 IN A RANGE BOX AT THE SOUTHEAST CORNER OF THE NORTHEAST $\frac{1}{4}$ NORTHEAST $\frac{1}{4}$.

DAMIEN CAIN PLS 38284
FOR AND ON BEHALF OF
39 NORTH ENGINEERING AND SURVEYING LLC
4495 HALE PARKWAY
SUITE 305
DENVER, CO 80220

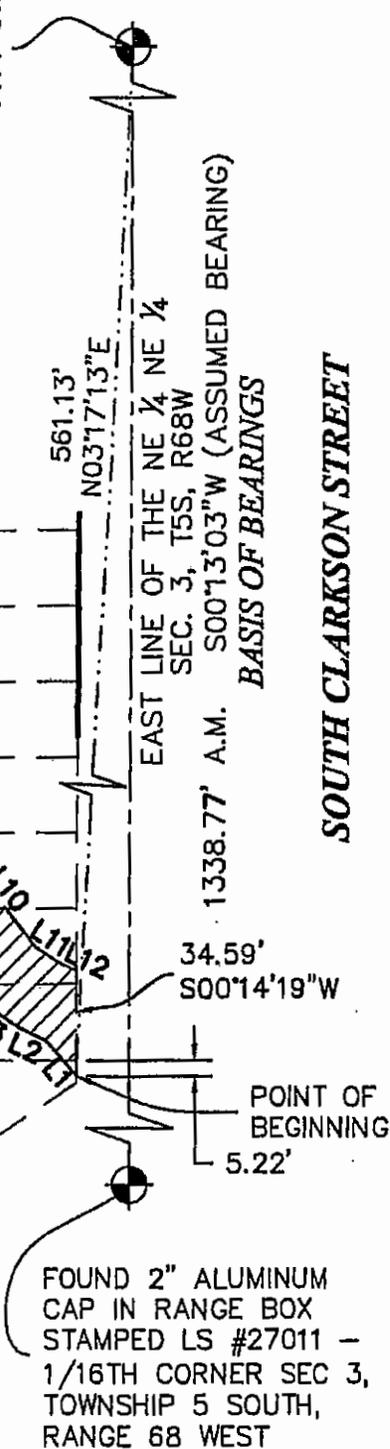
PREPARED BY:
39 NORTH ENGINEERING AND SURVEYING LLC
4495 HALE PARKWAY
SUITE 305
DENVER, CO 80220
PH: 303-325-5071
EMAIL: damien.cain@39north.net

EXHIBIT "A"

CITY DITCH RIGHT-OF-WAY

LINE TABLE		
LINE	LENGTH	BEARING
L1	15.50'	N40°35'24"W
L2	9.46'	N65°08'45"W
L3	14.94'	N55°37'54"W
L4	45.11'	N37°41'31"W
L5	24.56'	N35°05'19"W
L6	7.28'	N50°49'41"W
L7	28.17'	S25°20'54"E
L8	19.57'	S50°49'41"E
L9	27.44'	S35°05'19"E
L10	40.60'	S37°41'31"E
L11	8.91'	S55°37'54"E
L12	7.08'	S65°08'45"E

NORTHEAST CORNER
SEC. 3, T5S, R68W
FOUND 1.5" AXLE
IN RANGE BOX



EAST JEFFERSON AVENUE
(HAMPDEN AVENUE BYPASS)

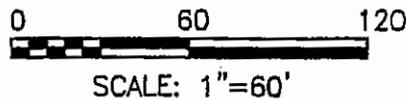


EXHIBIT "B"

CENTERLINE OF A PORTION OF CITY DITCH RIGHT-OF-WAY

LEGAL DESCRIPTION OF A PORTION OF THE CENTERLINE OF THE EXISTING CITY DITCH RIGHT-OF-WAY:

THE BELOW DESCRIBED CENTERLINE IS LOCATED IN THE NORTHEAST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., AND LOCATED WITHIN BLOCK 1, HIGGINS ENGLEWOOD GARDENS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF LOT 30, BLOCK 1, HIGGINS ENGLEWOOD GARDENS, WHENCE THE NORTHEAST CORNER OF SAID SECTION 3 BEARS N03°23'40"E, 542.03 FEET; THENCE DEPARTING FROM SAID EAST LINE ALONG THE FOLLOWING THIRTEEN (13) COURSES;

1. N40°35'24"W, 3.75 FEET;
2. N65°08'45"W, 11.14 FEET;
3. N55°37'54"W, 11.93 FEET;
4. N34°03'15"W, 19.33 FEET;
5. N40°40'15"W, 23.60 FEET;
6. N35°05'19"W, 26.00 FEET;
7. N50°49'41"W, 46.92 FEET;
8. N58°01'58"W, 46.00 FEET;
9. N62°14'07"W, 29.99 FEET;
10. N66°29'10"W, 26.32 FEET;
11. N74°18'01"W, 50.96 FEET;
12. N68°26'52"W, 21.90 FEET;
13. N58°39'32"W, 5.98 FEET TO A POINT ON THE WEST LINE OF LOT 14, BLOCK 1, HIGGINS ENGLEWOOD GARDENS, ALSO BEING THE POINT OF TERMINUS OF THE CENTERLINE OF EXISTING DITCH AS MARKED AND LOCATED IN THE FIELD.

BASIS OF BEARINGS: AN ASSUMED BEARING OF S00°13'03"W BEING THE EAST LINE OF THE NORTHEAST $\frac{1}{4}$ NORTHEAST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M. BETWEEN TWO FOUND MONUMENTS; ONE BEING A 1.5" DIAMETER STEEL AXLE AT THE NORTHEAST CORNER OF SAID SECTION AND THE OTHER BEING A 2" DIAMETER ALUMINUM CAP STAMPED LS #27011 IN A RANGE BOX AT THE SOUTHEAST CORNER OF THE NORTHEAST $\frac{1}{4}$ NORTHEAST $\frac{1}{4}$.

DAMIEN CAIN PLS 38284
FOR AND ON BEHALF OF
39 NORTH ENGINEERING AND SURVEYING LLC
4495 HALE PARKWAY
SUITE 305
DENVER, CO 80220

PREPARED BY:
39 NORTH ENGINEERING AND SURVEYING LLC
4495 HALE PARKWAY
SUITE 305
DENVER, CO 80220
PH: 303-325-5071
EMAIL: damien.cain@39north.net

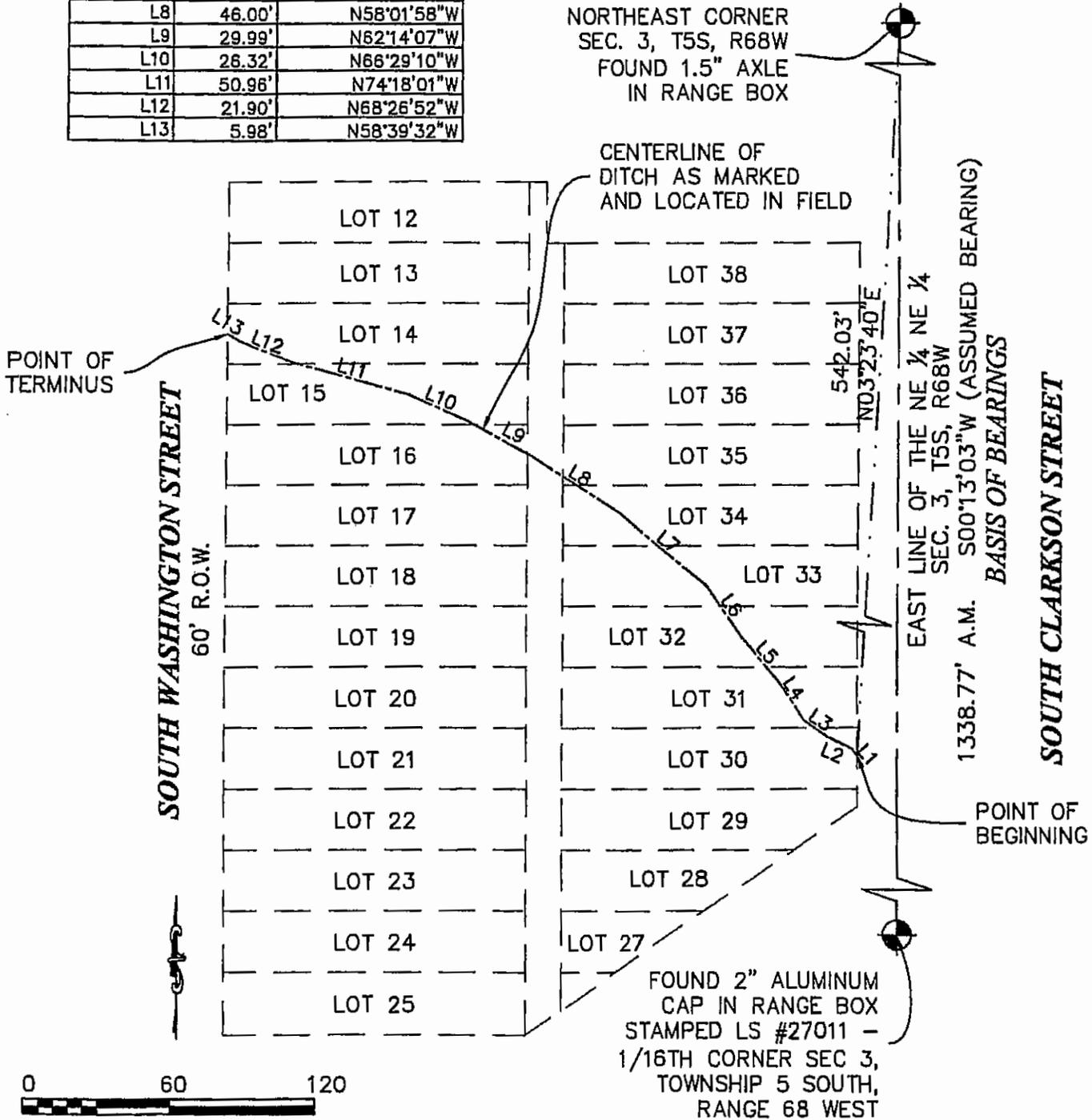
PLEASE NOTE THAT THIS EXHIBIT
AND LEGAL DESCRIPTION DOES
NOT REPRESENT A MONUMENTED
SURVEY PLAT. THE LOCATION OF
THE EXISTING DITCH IS AN
APPROXIMATE LOCATION BASED ON
PAINT MARKINGS IN THE FIELD
AND EXISTING MANHOLE LOCATIONS.

EXHIBIT "B"

CENTERLINE OF A PORTION OF CITY DITCH RIGHT-OF-WAY

LINE TABLE		
LINE	LENGTH	BEARING
L1	3.75'	N40°35'24"W
L2	11.14'	N65°08'45"W
L3	11.93'	N55°37'54"W
L4	19.33'	N34°03'15"W
L5	23.60'	N40°40'15"W
L6	26.00'	N35°05'19"W
L7	46.92'	N50°49'41"W
L8	46.00'	N58°01'58"W
L9	29.99'	N62°14'07"W
L10	28.32'	N66°29'10"W
L11	50.98'	N74°18'01"W
L12	21.90'	N68°26'52"W
L13	5.98'	N58°39'32"W

PLEASE NOTE THAT THIS EXHIBIT AND LEGAL DESCRIPTION DOES NOT REPRESENT A MONUMENTED SURVEY PLAT. THE LOCATION OF THE EXISTING DITCH IS AN APPROXIMATE LOCATION BASED ON PAINT MARKINGS IN THE FIELD AND EXISTING MANHOLE LOCATIONS.

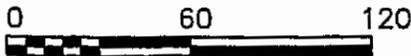


NORTHEAST CORNER
SEC. 3, T5S, R68W
FOUND 1.5" AXLE
IN RANGE BOX

CENTERLINE OF
DITCH AS MARKED
AND LOCATED IN FIELD

EAST LINE OF THE NE 1/4
SEC. 3, T5S, R68W
1338.77' A.M. S00°13'03"W (ASSUMED BEARING)
BASIS OF BEARINGS

FOUND 2" ALUMINUM
CAP IN RANGE BOX
STAMPED LS #27011 -
1/16TH CORNER SEC 3,
TOWNSHIP 5 SOUTH,
RANGE 68 WEST

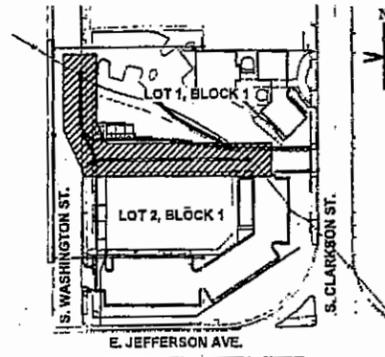


SCALE: 1"=60'

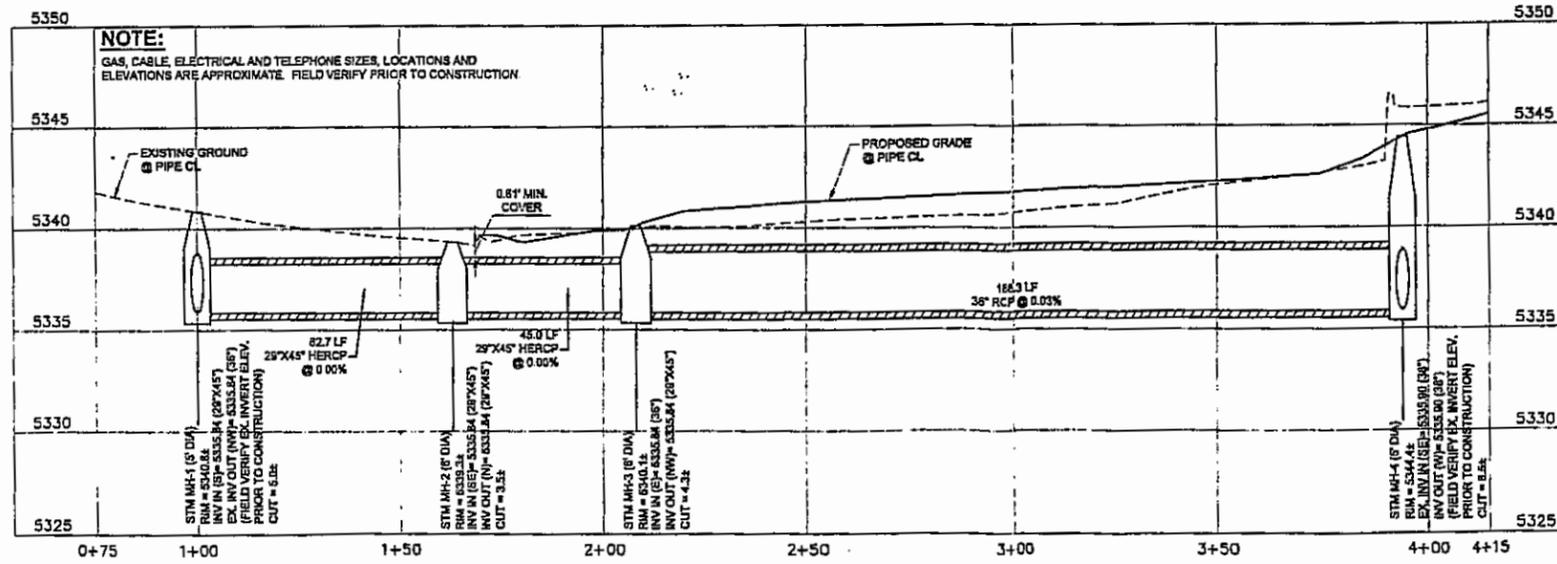
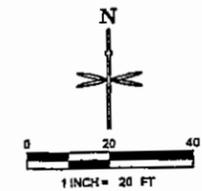
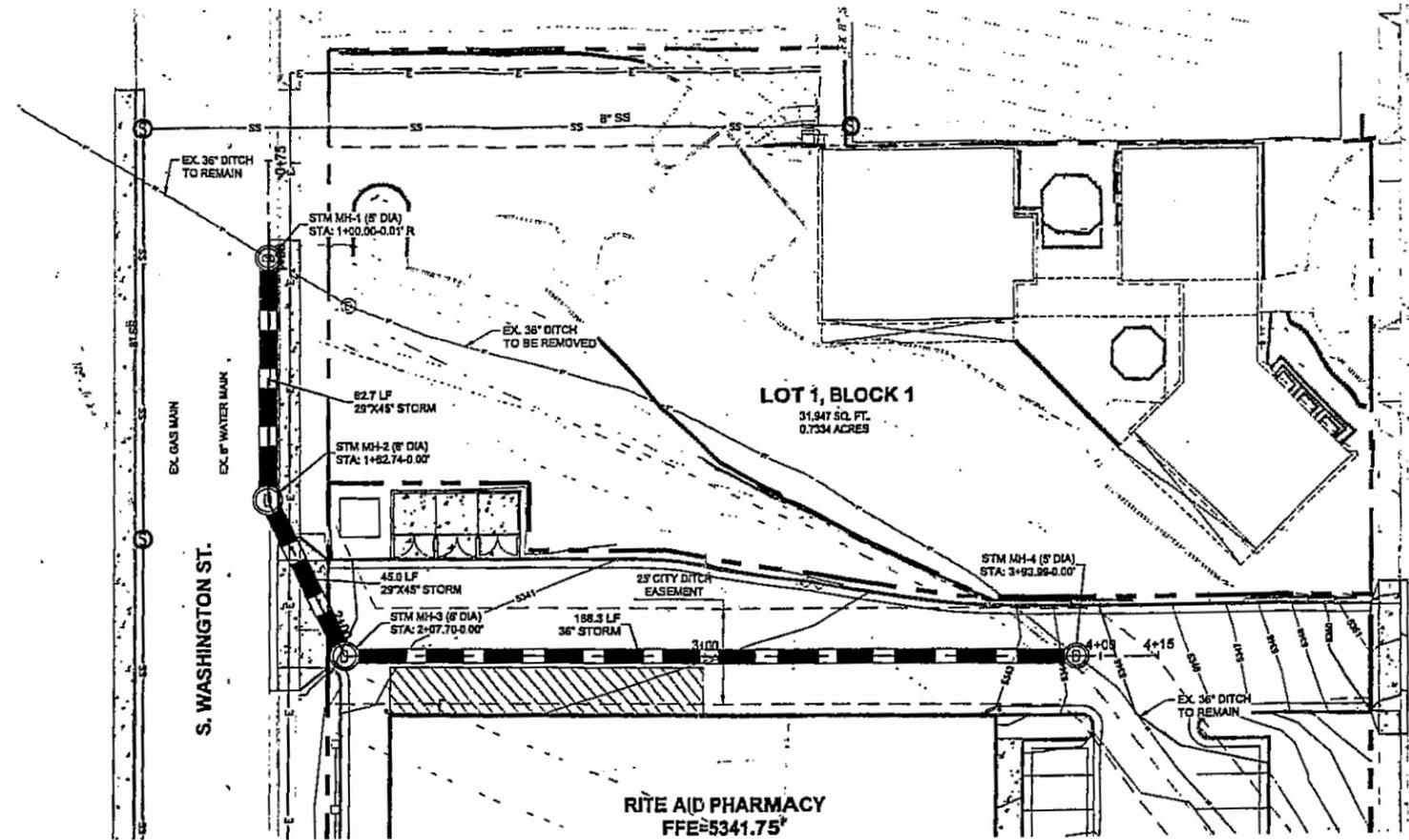
EAST JEFFERSON AVENUE
(HAMPDEN AVENUE BYPASS)

© 2013, ALL RIGHTS RESERVED.

P:\KENTRO GROUP\PROJECTS\ADDCO - ENGLEWOOD - HAKEN AND CLARKSON\DWG\CD\3 DITCH PLAN & PROFILE.DWG



KEYMAP
SCALE 1" = 100'



PROFILE STM - DITCH (STA: 0+75 TO 4+15)
SCALE: 1"=20' HORIZONTAL, 1"=4' VERTICAL

- LEGEND**
- PROPOSED EASEMENT
 - PROPERTY LINE
 - PROPOSED BUILDING SETBACK
 - PROPOSED CURB AND GUTTER
 - EXISTING CURB AND GUTTER
 - PROPOSED 6" CURB AND GUTTER
 - EXISTING WATER LINE
 - EXISTING OVERHEAD ELECTRIC
 - EXISTING STORM SEWER
 - EXISTING SANITARY SEWER
 - EXISTING GAS LINE
 - PROPOSED WATER LINE
 - PROPOSED SANITARY SEWER
 - PROPOSED STORM SEWER LINE
 - PROPOSED GAS LINE
 - PROPOSED UNDERGROUND ELECTRIC
 - PROPOSED STM & SAN. MANHOLES
 - EXISTING STM & SAN. MANHOLES
 - PROPOSED STORM INLET
 - EXISTING STORM INLET
 - PROPOSED FIRE HYDRANT
 - EXISTING UTILITY POLE
 - PROPOSED SITE LIGHTING

PROJECT BENCHMARK

NGS VERTICAL CONTROL POINT - W 409 (PID - KK1489) BEING A STAINLESS STEEL ROD IN 5" DIAMETER LOGO BOX AT THE SOUTHEAST CORNER OF SOUTH DOWLING STREET AND EAST JEFFERSON AVENUE. ELEV. = 5380.88 (NAVD 1988 DATUM)

811
Know what's below.
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CENTER OF COLORADO
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CALL 3 BUSINESS DAYS (NOT INCLUDING INITIAL DAY OF CONTACT) IN ADVANCE BEFORE YOU DIG GRAVE, OR EXCAVATE FOR THE MARKING OF UNDERGROUND MEMBER UTILITIES.

REVISION	DATE
0	12/09/15



UTILITY PLANS
RITE AID #6773
ENGLEWOOD, CO
E. JEFFERSON AVE. (CDDT 705) & CLARKSON ST.

UNDERGROUND DITCH PLAN & PROFILE

PROJECT NO.	KGR002.01
DESIGNED BY	KMH
DRAWN BY	KMH
DATE	12/09/15

C4.4
SHEET 5 OF 5

C-1-B-1XK

GRANT OF RIGHT OF WAY

THIS GRANT OF RIGHT OF WAY, made this 18th day of February, 2016, by and between the CITY OF ENGLEWOOD, a municipal corporation of the State of Colorado, "Grantee", and KRF 965, LLC whose address is 1509 York Street #201, Denver, CO 80206, herein referred to as "Grantor".

For ten dollars (\$10.00) and other valuable consideration including the Agreement to exchange property to allow the Grantor to build on the property located at 707 East Jefferson Avenue the receipt and sufficiency of which is hereby acknowledged. The undersigned does hereby grant unto the City of Englewood, Colorado its successors and assigns, a twenty-five foot (25') wide Right-of-Way for Municipal purposes, to repair, maintain and inspect its City Ditch, over and through the property described on Exhibit A attached hereto and incorporated herein, with the Street Address of:

707 East Jefferson Avenue
Englewood, CO 80113

This Right-of-Way shall be used for the City Ditch, an irrigation ditch system. The City shall have full use of this Right-of-Way for its use including the operation and maintenance of said irrigation ditch.

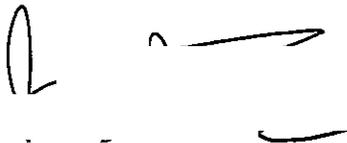
The Grantor hereby grants a right of access over and across the property know as:

707 East Jefferson Avenue
Englewood, CO 80113

IN WITNESS WHEREOF, the parties hereto have executed this Grant of Right of Way the day and year first above written.

GRANTOR(S):

RV.

Handwritten signature and scribbles, including a large 'R' and a horizontal line.

STATE OF COLORADO)
)ss.
COUNTY OF Donnell)

The foregoing instrument was acknowledged before me this 18 day of February, 2016 by Jimmy Balafas as Chief Executive Officer of KRF 965, LLC, on the Grant of Right of Way, base sheet rotary.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

My Commission Expires: My Commission Expires 05/28/2016

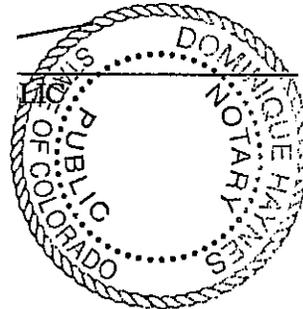


EXHIBIT "A"
CITY DITCH RIGHT-OF-WAY

LEGAL DESCRIPTION FOR CITY DITCH RIGHT-OF-WAY:

A PARCEL OF LAND LOCATED IN THE NORTHEAST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M., BEING A PORTION OF LOTS 29 TO 34, A PORTION OF LOTS 16 TO 18 AND A PORTION OF THE VACATED ALLEY, BLOCK 1, HIGGINS ENGLEWOOD GARDENS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS 5.22 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT 29, WHENCE THE NORTHEAST CORNER OF SAID SECTION 3 BEARS N03°17'13"E, 561.13 FEET; THENCE N40°35'24"W, 15.50 FEET; THENCE N65°08'45"W, 9.46 FEET; THENCE N55°37'54"W, 14.94 FEET; THENCE N37°41'31"W, 45.11 FEET; THENCE N35°05'19"W, 24.56 FEET; THENCE N50°49'41"W, 7.28 FEET; THENCE N89°45'53"W, 186.16 FEET TO A POINT ON THE WEST LINE OF SAID LOT 18; THENCE N00°14'07"E ALONG SAID WEST LINE OF SAID LOT 18 AND SAID LINE EXTENDED, 50.41 FEET TO A POINT ON THE WEST LINE OF SAID LOT 16; THENCE S25°20'54"E, 28.17 FEET; THENCE S89°45'53"E, 182.83 FEET; THENCE S25°20'54"E, 28.17 FEET; THENCE S50°49'41"E, 19.57 FEET; THENCE S35°05'19"E, 27.44 FEET; THENCE S37°41'31"E, 40.60 FEET; THENCE S55°37'54"E, 8.91 FEET; THENCE S65°08'45"E, 7.08 FEET TO A POINT ON THE EAST LINE OF SAID LOT 31; THENCE S00°14'19"W ALONG SAID EAST LINE OF SAID LOT 31 AND SAID LINE EXTENDED, 34.59 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 7,656 SQUARE FEET OR 0.1758 ACRES MORE OR LESS.

BASIS OF BEARINGS: AN ASSUMED BEARING OF S00°13'03"W BEING THE EAST LINE OF THE NORTHEAST $\frac{1}{4}$ NORTHEAST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M. BETWEEN TWO FOUND MONUMENTS; ONE BEING A 1.5" DIAMETER STEEL AXLE AT THE NORTHEAST CORNER OF SAID SECTION AND THE OTHER BEING A 2" DIAMETER ALUMINUM CAP STAMPED LS #27011 IN A RANGE BOX AT THE SOUTHEAST CORNER OF THE NORTHEAST $\frac{1}{4}$ NORTHEAST $\frac{1}{4}$.

DAMIEN CAIN PLS 38284
FOR AND ON BEHALF OF
39 NORTH ENGINEERING AND SURVEYING LLC
4495 HALE PARKWAY
SUITE 305
DENVER, CO 80220

PREPARED BY:
39 NORTH ENGINEERING AND SURVEYING LLC
4495 HALE PARKWAY
SUITE 305
DENVER, CO 80220
PH: 303-325-5071
EMAIL: damien.cain@39north.net

EXHIBIT "A"

CITY DITCH RIGHT-OF-WAY

LINE TABLE		
LINE	LENGTH	BEARING
L1	15.50'	N40°35'24"W
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L11	8.91'	S55°37'54"E
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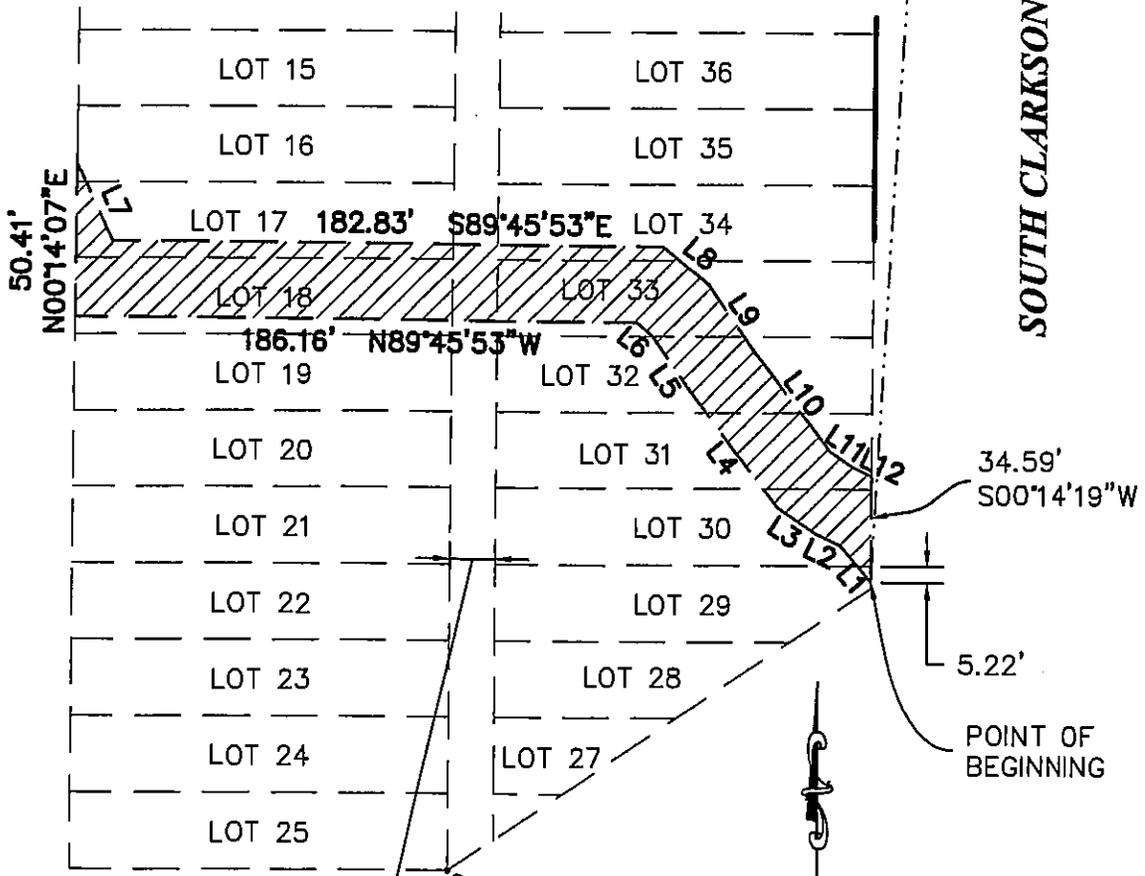
NORTHEAST CORNER
SEC. 3, T5S, R68W
FOUND 1.5" AXLE
IN RANGE BOX



561.13'
N03°17'13"E

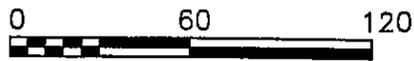
SOUTH CLARKSON STREET

SOUTH WASHINGTON STREET
60' R.O.W.



VACATED ALLEY
SWR. & UTIL. ESMT.
BK 1753 PG 486

EAST JEFFERSON AVENUE
(HAMPDEN AVENUE BYPASS)



SCALE: 1"=60'

COUNCIL COMMUNICATION

Date	Agenda Item	Subject
March 14, 2016	11av	Ordinance to approve lease of Englewood McLellan Reservoir Foundation property to Shea Properties d.b.a. Central Park at Highlands Ranch, LLC.
INITIATED BY Englewood McLellan Reservoir Foundation		STAFF SOURCE Michael Flaherty, EMRF Board of Directors

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

In 1999, City Council authorized the creation of the Englewood McLellan Reservoir Foundation (EMRF) for the purpose of facilitating the development of property adjacent to the City's McLellan Reservoir. On July 6, 2015, City Council approved Resolution 85 that supported EMRF in its negotiations with Shea for the lease, with an option to purchase, the EMRF property in Highlands Ranch Planning Area 81 (PA 81.) On July 20, 2015, City Council approved Ordinance 28 that placed a ballot measure authorizing the sale of EMRF property following a minimum lease of 20 years. Ballot Question 2K was subsequently approved by Englewood voters in the November 2015 election authorizing sale of EMRF property, subject to ordinance approval by City Council.

RECOMMENDED ACTION

EMRF recommends City Council approve a bill for an ordinance approving the lease of the EMRF property in PA 81 to Shea Properties d.b.a. Central Park at Highlands Ranch, LLC, with an option to purchase following a lease term of 20 years.

BACKGROUND

In 1999, through Ordinance 41, City Council authorized the transfer of certain parcels of property in Douglas County near McLellan Reservoir to EMRF for the purpose of facilitating the development of those properties. Since that time, EMRF has managed and maintained the property, has made improvements, including over-lot grading and storm water management, and has platted most of the individual parcels, including the subject parcel.

On July 6, 2015, City Council approved Resolution 85 that supported EMRF in its negotiations with Shea Properties d.b.a. Central Park at Highlands Ranch, LLC, for the lease of PA 81, with an option to purchase after 20 years. After the passage of Ballot Question 2K in November of 2015, Shea has secured initial entitlements from Douglas County, including determination of County requirements for roadway and park dedication. The land necessary for the required roadways to serve the development of PA 81 and for dedication of a three acre park to be allocated between Shea and EMRF. Shea has secured a tenant of an institutional nature and has reached a tentative tenant

agreement for use of a significant portion of PA 81, based on the terms of the proposed lease with EMRF. The institutional use is subject to the approval of the option to purchase the property in the future, as provided by the approval of 2015 ballot question. The nature of the institutional use is one of such permanence that a future purchase is a requirement of its agreement with Shea.

The basic terms of the proposed lease, with option to purchase are as follows:

1. An initial lease term of 20 years, with extension options up to 65 years.
2. The lease of 33.3 acres of the EMRF PA 81 in its entirety, less land dedications required by Douglas County for roadways and a three acre public park. The land dedications are to be distributed equally between EMRF and Shea.
3. A net annual rental rate based on a \$6/sq. ft. value with a capitalization rate of 4.5%, or approximately \$9.2 million over the initial 20 year term of the lease.
4. An annual inflation rate increase of 2% the initial 20 year term with an adjustment after year 20, based on actual inflationary factors
5. A purchase option at the expiration of the initial lease term, based on a fair market value determined by appraisal of the land in an unimproved, vacant condition.
6. The exchange agreement between Shea and EMRF is subject to, and will take place concurrently with, the closing of the lease, and is subject to execution of the lease.

FINANCIAL IMPACT

The initial 20 year lease term will generate \$9.2 million. In addition, the sale of the property at the end of the 20 year term will generate additional revenue based on the appraisal of the unimproved ground at that time.

LIST OF ATTACHMENTS

Bill for an Ordinance
Lease agreement

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 12
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING A LEASE WITH AN OPTION TO PURCHASE AFTER 20 YEARS ENGLEWOOD MCLELLAN RESERVOIR FOUNDATION AND SHEA PROPERTIES d.b.a. CENTRAL PARK HIGHLANDS RANCH, LLC. IN PLANNING AREA 81 (PA 81).

WHEREAS, THE Englewood McLellan Reservoir Foundation was formed to oversee the development of the McLellan Reservoir property; and

WHEREAS, The Englewood City Council authorized the creation of the Englewood Reservoir Foundation, a non-profit corporation charged with furthering the development of the McLellan Reservoir property and transferred the property to Englewood McLellan Reservoir Foundation by the passage of Ordinance No. 41, Series of 1999; and

WHEREAS, the imposition of covenants or use restrictions on all lands within the development area ensure a consistent high level of development; and

WHEREAS, leasing for no less than 20 years prior to the sale of the property will provide even greater protection to the McLellan Reservoir's water quality when compared to development without the restrictions; and

WHEREAS, the Englewood McLellan Reservoir Foundation and Shea Properties d.b.a. Central Park Highlands Ranch, LLC. have agreed to lease approximately 33.3 acres, with a future option to purchase as outlined:

- A lease term of 20 years, with extensions up to 65 years.
- An initial net annual rental rate based on a \$6/sq. ft. value with a capitalization rate of 4.5%, or approximately \$460,000 on average per year.
- An annual inflation rate increase of 2% for years 2 – 10, with an adjustment for years 11 – 20 based on appraisal.
- A purchase option at the expiration of the lease term, based on a fair market appraisal of the land in an improved, vacant condition.
- The lease, if executed, would take down the property in a time frame to be determined.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The City Council of the City of Englewood, Colorado, hereby approves the Lease with an Option to Purchase after 20 years between Shea Properties d.b.a. Central Park Highlands Ranch, LLC. and the Englewood McLellan Reservoir Foundation, attached hereto as Exhibit 1.

Section 2. The President of the Englewood McLellan Reservoir Foundation is hereby authorized to sign said Lease for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 17th day of March, 2016.

Published as a Bill for an Ordinance on the City's official website beginning on the 16th day of March, 2016 for thirty (30) days.

Joe Jefferson, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 14th day of March, 2016.

Loucrishia A. Ellis

GROUND LEASE

between

CENTRAL PARK AT HIGHLANDS RANCH, LLC

as Tenant

and

ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION

as Landlord

dated as of _____

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GROUND LEASE

This **GROUND LEASE** (the "**Lease**") is made as of the ____ day of _____, 2016, by and between **ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION**, a Colorado nonprofit corporation ("**Landlord**"), and **CENTRAL PARK AT HIGHLANDS RANCH, LLC**, a Colorado limited liability company ("**Tenant**"), Landlord and Tenant are sometimes herein referred to individually as a "**Party**" and collectively as the "**Parties**"). The date this Lease is executed and delivered by both parties hereto shall be referred to hereinafter as the "Effective Date."

WITNESSETH:

For and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to the terms and conditions as hereinafter provided:

**Article 1
Fundamental Lease Terms**

For convenience, this Article 1 summarizes certain fundamental economic and business terms of this Lease.

Effective Date: _____, 2016.

Premises: The Real Property, Appurtenances and improvements defined in and described in Article 2.2A below..

Landlord ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION
1000 Englewood Parkway
Englewood, CO 80110
Attention: President

With a copy to:

City of Englewood
1000 Englewood Parkway
Englewood, CO 80110
Attention: City Attorney

Tenant Central Park at Highlands Ranch, , LLC
6380 South Fiddlers Green Circle
Suite 400
Greenwood Village, CO 80111
Attention: Peter A. Culshaw

With a copy to:

Shea Properties
6380 South Fiddlers Green Circle
Suite 400
Greenwood Village, CO 80111
Attention: Jeffrey H. Donelson, Esq.
Regional Counsel

Term: Twenty (20) years from the Commencement Date, plus any extension option properly exercised by Tenant pursuant to Article 3.2.

Option: Four (4) renewal options of ten (10) years each and one (1) final option of five (5) years.

Rent: Annual amount of \$391,448, calculated at the rate of \$6.00 per square foot multiplied times a capitalization rate of four and one half percent (4.5%), as Rent commencing as provided in Article 4, increased two percent (2%) each year for each of the second through the tenth Lease Year, and thereafter adjusted as provided in Article 4.

This is a Net Lease.

Deposit \$200,000 as provided in Article 4.4.

Article 2 Ground Lease of Premises

1. **Definitions.** For purposes of this Lease, the following terms shall have the following meanings:

- A. "Buildings" shall mean the buildings which may be constructed by Tenant on the Premises.
- B. "Casualty" shall have the meaning set forth in Article 11.1.
- C. "Commencement Date" shall have the meaning set forth in Article 3.1.

D. "Default Rate" shall mean interest accruing at the rate equal to the Prime Rate plus three percent (3%), which rate shall be adjusted with each change in the Prime Rate. However, in no event shall the Default Rate be less than ten percent (10%) per annum. For purposes of this Lease, "Prime Rate" shall mean the prime rate as published in the Wall Street Journal. If the prime rate published by The Wall Street Journal becomes unavailable, Landlord shall use the prime rate as announced or published by such other organization or publication as reasonably determined by Landlord to be comparable to the prime rate now published in The Wall Street Journal.

E. "Effective Date" shall mean the date this Lease is signed by both Parties.

F. "Environmental Law" shall have the meaning set forth in Article 19.1.J.

G. "Event of Default" shall have the meaning set forth in Article 13.1.

H. "Exercise Notice" shall have the meaning set forth in Article 20.1.

I. "Excusable Delay" shall mean any of the following events that prevents, delays, retards or hinders a Party's performance of its duties hereunder: act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; any material delay caused by the non-performing Party without fault of the performing Party; or any delays due to causes beyond the control of the performing Party and without its fault or negligence.

J. "Extension Option" shall have the meaning set forth in Article 3.2.

K. "Fair Market Value" shall have the meaning set forth in Article 4.2.B.

L. "First Extension Option" shall have the meaning set forth in Article 3.2.

M. "First Extension Option Period" shall have the meaning set forth in Article 3.2.

N. "Improvements" shall mean the Buildings and any other improvements constructed on or under the Premises.

O. "Initial Term" shall mean the first twenty (20) Lease Years as more specifically described in Article 3.1.

P. "Landlord" is Englewood/McLellan Reservoir Foundation.

Q. "Leasehold Mortgage" shall have the meaning set forth in Article 18.1.

R. "Leasehold Mortgagee" shall have the meaning set forth in Article 18.1.

S. "Lease Year" shall have the meaning set forth in Article 3.1.

- T. "Market Value Adjustment" shall have the meaning set forth in Article 4.2.B.
- U. "Memorandum of Lease" shall have the meaning set forth in Article 17.2.
- V. "Monetary Default" shall have the meaning set forth in Article 13.1.
- W. "Non-Monetary Default" shall have the meaning set forth in Article 13.1.
- X. "Permitted Exceptions" shall have the meaning set forth in Article 19.
- Y. "Premises" shall have the meaning set forth in Article 2.2.A.
- Z. "Purchase Option" shall have the meaning set forth in Article 20.
- AA. "Qualified Assignee" shall have the meaning set forth in Article 7.2.A.
- BB. "Real Estate Taxes" shall mean all taxes, however named, assessed, levied, or collected, whether on an ad valorem basis or other taxing method on the Premises, Improvements, Buildings, and assessments for land, betterments, and improvements that are levied or assessed on the Premises or the Improvements by any lawful authority, as finally determined in accordance with law, net of any applicable abatements, refunds, or rebates.
- CC. "Rent" shall mean the amount set forth in Article 4.
- DD. "Shea Related Entity" shall have the meaning set forth in Article 7.2.A.
- EE. "Tenant" is Central Park at Highlands Ranch, LLC, and its permitted successors or assigns.
- FF. "Term" shall have the meaning set forth in Article 3.2.
- GG. "Title Commitment" shall have the meaning set forth in Article 3.4.
- HH. "Title Company" shall mean Fidelity National Title Company, or such other title company mutually agreed upon by Landlord and Tenant.

2. Premises.

A. Lease of Premises. For the term, uses, rent, and in consideration of the covenants and agreements contained herein, and for other valuable consideration, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the following terms, stipulations, provisions, and conditions, (i) that certain real property consisting of 33.283 acres depicted on Exhibit A attached hereto and incorporated herein by this reference (the "Real Property"), (ii) all of Landlord's right, title and interest in and to (a) all appurtenances to or used in connection with the Real Property, including but not necessarily limited to all rights of ingress, egress, and use of adjoining alleys, easements, rights of way, and streets (collectively, the "Appurtenances"), and (b) all improvements, if any, currently located on, appurtenant to, or used in connection with the

Real Property. Upon recordation of the Replat, as described in Article 3.5.A below, the Real Property shall be legally described as Lot 4, Highlands Ranch Filing No. 156, 1st Amendment, and following such recordation, the description of the Real Property hereunder shall be deemed to be amended to be the final legal description of the Real Property as shown on the recorded Replat. The Real Property, the Appurtenances and such improvements are herein sometimes collectively referred to as the "Premises".

B. Title. Landlord hereby warrants to Tenant that it has good, marketable and insurable title to the Premises, free and clear of any mortgages, pledges, liens, and other encumbrances, subject only to the exceptions to title shown in the Title Commitment.

3. Condition of Premises; Tenant Release. Except as otherwise expressly provided herein, the Premises are being leased in their as-is condition. Except for Landlord's representations and warranties expressly set forth in this Lease, Tenant hereby waives, releases, acquits and forever discharges Landlord and its officers, directors, shareholders, employees, agents, successors and assigns, of and from any and all suits, causes of action, claims, demands, damages (actual and punitive), losses, costs, liabilities, and expenses, including attorneys' fees, of any kind or nature, in law or in equity, known or unknown, which Tenant shall or may have or acquire or possess in any way directly or indirectly connected with, based upon, or arising out of (i) Landlord's use, maintenance, leasing, ownership, operation, and demolition of improvements upon the Premises prior to the Effective Date of this Lease; or (ii) the condition (including environmental condition and structural fitness), status, quality, or nature of the Premises. Except as otherwise expressly provided herein, it is the intention of this Lease that any and all responsibilities and obligations of Landlord, and any and all rights or claims of Tenant against Landlord its successors and assigns and affiliates, arising by virtue of the physical condition of the Premises, are by this release declared null and void and of no present or future effect as to such parties.

4. Improvements. Tenant, at its sole cost and expense, with its own forces or those of its contractors, may construct Improvements on the Premises. All of the Improvements shall comply in all material respects with all applicable governmental requirements.

5. Easements; Subdivision Cooperation. Landlord and Tenant agree, upon the reasonable request of either Party to this Lease, the applicable governmental agency, or a public utility, to execute documents which are reasonably required to create utility easements, temporary construction easements, or other easements required to construct the Improvements, maintain and service the Improvements or any other improvements to be developed on the adjoining lands owned by Tenant, and any easements as Tenant may require to conduct its business, provided such easements do not unreasonably interfere with either Party's use of its property. Each Party will undertake to obtain the consent of its mortgagee, if any, to any easements required under this paragraph. To the extent an easement agreement is reasonably required in accordance with this Section, to the extent possible, Tenant shall be the Grantor and Landlord shall consent to such easement. In addition, to the extent that Tenant requires a further subdivision of the Real Property in order to accommodate Tenant's development of the Premises, Landlord shall reasonably cooperate with such further subdivision, and shall execute any plats or replats required in connection therewith.

6. Possession. Landlord shall deliver possession of the Premises to Tenant on the Commencement Date (as hereinafter defined).

7. Signage. Tenant shall have the right, at Tenant's expense, to erect and use pylons or monument signs on the Premises to the extent permitted by applicable government ordinances, rules and regulations.

Article 3

Lease Term; Entry; Title Insurance; Contingencies

1. Term; Effective Date; Commencement Date. This Lease shall become legally binding on the Effective Date. However, the lease term ("Initial Term") shall commence on the date that is six (6) months from the date of the Replat Approval, as such term is defined in that certain Exchange Agreement between Landlord and Tenant with an Effective Date the same as the Effective Date under this Lease (the "Exchange Agreement", such date to be the "Commencement Date"). Unless extended as provided below, the Initial Term shall expire at 11:59 p.m. on the last day of the last calendar month of the twentieth (20th) Lease Year. For purposes of this Lease, the term "Lease Year" shall mean each twelve (12) month period beginning on the Commencement Date, if the Initial Term commences on the first day of a calendar month, and on the first day of the calendar month subsequent to the Commencement Date, if the Initial Term does not commence on the first day of a calendar month.

2. Extension Options. Tenant shall have an option to extend the Initial Term ("First Extension Option") for an additional ten (10) years ("First Extension Option Period"). If the First Extension Option is exercised, Tenant shall have three additional options to extend the Term for three additional consecutive terms, each consisting of ten (10) years, and one final additional option term of five (5) years. The First Extension Option and each additional extension option (each, an "Extension Option") shall be on the same terms and conditions as set forth herein (there shall be no options beyond the Extension Options granted in this Article 3.2), except the Rent at the commencement of the First Extension Option Period will be increased as provided in Article 4.2.B, and will increase at the start of each additional Extension Option period as provided in Article 4.2.B. Tenant shall have the right to exercise its Extension Options by providing Landlord written notice exercising its option to extend not less than one hundred eighty (180) days prior to the expiration of the then-current Term. As a condition of Tenant's right to exercise one or more Extension Options to extend the term, at the time of the giving of its notice of exercise there shall be no uncured Event of Default.

3. Tenant's Right of Entry. Before the Commencement Date, Tenant, its agents, employees, contractors, or subcontractors, prospective lenders and investors shall have been given the right of access to the Premises to test, inspect, and evaluate the Premises as Tenant deems appropriate. Tenant shall promptly restore any alterations made to the Premises by Tenant, or at Tenant's instance or request, and Tenant shall pay for all work performed by Tenant, or at Tenant's instance or request. Any and all liens on any portion of the Premises resulting from the actions or requests or otherwise at the instance of Tenant shall be removed by Tenant at its expense within thirty (30) days after notice thereof is given to Tenant. Tenant shall, at Tenant's expense, defend, indemnify, and hold harmless Landlord from and against any and all obligations, claims, loss, and damage, including costs and attorneys' fees, to the extent the same are caused by Tenant's entry upon or inspection of the Premises. Tenant shall provide

Landlord in a commercially reasonable timeframe with copies of tests and reports obtained by Tenant. Tenant's obligations under this Section to restore, to pay for all work, to remove liens, and to defend, indemnify and hold Landlord harmless shall survive the termination of this Lease.

4. Title Insurance. Tenant, prior to the Effective Date, shall have obtained a Title Insurance Commitment from the Title Company ("Title Commitment"), and Tenant shall have until the date that is thirty (30) days from the Effective Date to have reviewed and either objected to or approved in writing the exceptions to title disclosed in the Title Commitment. If Tenant objects to any such exceptions disclosed in the Title Commitment, and if Landlord has not cured Tenant's objection to such exceptions or Tenant has not waived its objection to such exceptions prior to the date that is sixty (60) days from the Effective Date, Tenant may terminate this Lease without any liability or obligation to Landlord hereunder. In addition, prior to the Commencement Date, Tenant shall obtain an update to the original Title Commitment, and Tenant shall have the right to object in writing to any additional exceptions to title revealed by such updated Title Commitment that were not contained in the original Title Commitment, other than any exceptions that arise by, through or under Tenant (the "Additional Exceptions"). If Tenant objects to any such Additional Exceptions disclosed in the updated Title Commitment and if Landlord has not cured Tenant's objection to the Additional Exceptions or Tenant has not waived its objection to the Additional Exceptions prior to the Commencement Date, Tenant may terminate this Lease without any liability or obligation to Landlord hereunder. Following the Effective Date, Tenant, at its option and sole cost and expense, may obtain a Leasehold Title Insurance Policy.

5. Contingencies to Tenant's Obligations. Tenant's obligations under this Lease are expressly contingent upon the following:

A. Tenant shall have until 5:00 P.M. on the date that is thirty (30) days from the Effective Date ("Inspection Period") to inspect and evaluate the Premises to determine their suitability for Tenant's intended use. Tenant may, for any reason and in its sole discretion, terminate this Lease by written notice to Landlord given on or before the last day of the Inspection Period. In the event Tenant delivers the termination notice during the Inspection Period, the Deposit, including accrued interest, shall be promptly paid to Tenant. Upon Tenant giving such termination notice, and upon return of the Deposit to Tenant, and except to the extent Tenant's obligations survive as provided above in Article 3.3, this Lease shall terminate and be of no further force and effect and each Party shall be relieved of all further obligations hereunder. If Tenant does not deliver to Landlord written notice of termination resulting from its inspection prior to the expiration of the Inspection Period, Tenant shall be deemed to have waived its right of termination under this Paragraph A, and this Lease shall continue in full force and effect.

B. On or before the date that is six (6) months from the Effective Date (the "Contingency Satisfaction Date"), each of the following shall have occurred:

(1) The Replat Approval (as defined in the Exchange Agreement) shall have been obtained, and the Replat (as defined in the Exchange Agreement) shall have been executed by both Landlord and Tenant and recorded in the records of Douglas County, Colorado;

(2) The Exchange Closing (as defined in the Exchange Agreement) shall have occurred, so that Landlord shall have acquired title to all of the Premises; and

(3) Central Park at Highlands Ranch, LLC, as the original Tenant hereunder, shall have assigned its rights and obligations as Tenant to a Qualified Assignee, such Qualified Assignee shall have executed and delivered the assumption agreement described in Article 7.2.A below, and Landlord shall have delivered the estoppel certificate regarding such assignment described in Article 7.2.A.

In the event that any of the contingencies set forth above in this Paragraph B have not been satisfied for any reason on or before the Contingency Satisfaction Date, Tenant may terminate this Lease by written notice to Landlord, given on or before 5:00 p.m. on the Contingency Satisfaction Date. In the event Tenant timely delivers the described termination notice, the Deposit, including accrued interest, shall be promptly paid to Tenant. Upon Tenant giving such termination notice, and upon return of the Deposit to Tenant, and except to the extent Tenant's obligations survive as provided above in Article 3.3, this Lease shall terminate and be of no further force and effect and each Party shall be relieved of all further obligations hereunder.

6. Contingency to Both Parties' Obligations. The obligations of both Landlord and Tenant under this Lease are expressly contingent upon the final passage of a resolution by the Englewood City Council approving the inclusion of the Purchase Option in this Lease, and the expiration of the applicable thirty (30)-day referendum period allowed by applicable law with respect to such resolution. In the event that such contingency has not been satisfied for any reason on or before the date that is sixty (60) days from the Effective Date, either Party may terminate this Lease by written notice to the other Party, given on or before 5:00 p.m. on the date that is sixty (60) days from the Effective Date. In the event either Party timely delivers the described termination notice, the Deposit, including accrued interest, shall be promptly paid to Tenant. Upon either Party giving such termination notice, and upon return of the Deposit to Tenant, and except to the extent Tenant's obligations survive as provided above in Article 3.3, this Lease shall terminate and be of no further force and effect and each Party shall be relieved of all further obligations hereunder.

Article 4 Rent

1. Rent. Tenant shall pay to Landlord, in United States Dollars, beginning on the Commencement Date, Rent in the annual amount of \$391,448.00 payable monthly in the amount of \$36,620.67. Rent shall be payable in monthly installments, in advance on the first day of each calendar month, with appropriate proration for any partial calendar month or Lease Year, at the address given for Landlord in Article 17 hereof, as such address may be changed in accordance with Article 17. Rent shall be adjusted as provided in Article 4.2.

2. Rent Adjustments.

A. Rent shall be adjusted during the Initial Term as follows: Rent during Lease Years two (2) through twenty (20)--Rent shall be equal to one hundred two percent (102%) of the prior Lease Year's Rent.

B. In the event Tenant exercises the First Extension Option, at the start of Lease Year 21, Rent shall be adjusted to equal the product of the then Fair Market Value of the Premises multiplied by a capitalization rate equal to the ten (10) year Treasury rate plus an additional two and one half percent (2.5%) ("**Market Value Adjustment**"), but in no event shall the Rent be less than the Rent that was payable during the preceding Lease Year. The calculation of the Market Value Adjustment shall be made as of the first day of Lease Year 21. In the event Tenant exercises any additional Extension Options, Rent payable during each such additional Extension Option period shall be adjusted by the Market Value Adjustment defined above calculated as of the first day of each such additional Extension Option period, but in no event shall Rent be less than Rent for the preceding Lease Year. Rent during Lease Years 2 through 10 of each additional Extension Option period (or Lease Years 2 through 5 of the final Extension Option period) shall be equal to one hundred two percent (102%) of the prior Lease Year's Rent. For purposes of this Article 4, the term "**Fair Market Value**" shall be the value of the Premises as of the date of the Market Value Adjustment agreed by Landlord and Tenant, which shall be calculated based on the Premises being vacant land only without assigning any value to any Improvements then constructed, or proposed to be constructed, on or under the Premises. In the event Landlord and Tenant are unable to agree on such Fair Market Value, the Premises shall be appraised in accordance with the procedure set forth in Article 20.3 (but in no event shall Rent be less than Rent in the immediately preceding Lease Year).

3. Net Lease. This Lease is a net lease. Except as may be expressly provided otherwise in this Lease, all costs incurred in connection with the construction, operation, maintenance and leasing, if applicable, of the Improvements and all Real Estate Taxes and other costs incurred in connection with and in relation to the Premises shall be paid by Tenant. Landlord shall have no obligation to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Improvements or the Premises.

4. Deposit. Simultaneously with the execution of this Lease by Landlord and Tenant, Tenant shall deliver to the Title Company, as Escrow Agent, the Deposit (as defined in Article 1), and Escrow Agent shall invest the Deposit in an interest bearing account. Escrow Agent, upon written confirmation from the Parties that the Commencement Date has occurred, shall pay to Landlord the Rent for the first month of the first Lease Year from the escrow fund, and shall continue such monthly payments until such time as the escrow fund, including accrued interest, is exhausted. Landlord and Tenant shall each execute Escrow Agent's standard escrow instructions in connection with the escrow, with such reasonable modifications thereto as either Party shall request, and Tenant shall pay the escrow fee charged by Escrow Agent in connection therewith at the time that the escrow is established.

Article 5
Taxes

1. Real Estate Taxes.

A. During the term of this Lease, Tenant shall assume, pay, bear, and discharge any and all Real Estate Taxes with respect to the Premises, or any part thereof, and all other taxes in any manner applicable to or assessed against the Premises or Buildings or any part thereof, or against any of the machinery, fixtures, equipment, or other property or items belonging to Tenant and located on the Premises. Tenant shall pay all Real Estate Taxes directly to the taxing authorities and Tenant shall be receive all reimbursements on account of abatements, refunds, or rebates of Real Estate Taxes during the term of this Lease. Landlord hereby authorizes Tenant to file and pursue any protest of the valuation of the Premises and abatement petitions for abatement of taxes for any reason, as Tenant may deem to be appropriate. Landlord agrees to execute any form of agreement as may be necessary in connection therewith.

B. In the event the Premises are now included in a larger tax parcel owned by Landlord, Landlord shall take such actions as may be necessary to make the Premises a separate tax parcel. Tenant shall cooperate with Landlord in such action.

C. In the event a special assessment is included within the definition of Real Estate Taxes, and such assessment may be paid in periodic installments, Tenant may either pay such periodic installments, or may prepay or retire the entire special assessment indebtedness. Tenant shall be responsible only for those installments relating to the period included within the Term, based upon the maximum number of installments in which the same may be paid. In the event any proposed special assessment would provide for payment extending beyond the Term (excluding any extension options), unless Tenant agrees to pay for all of such assessment, Landlord shall have the right to participate in the process of accepting or rejecting such assessment. Otherwise Tenant shall have the sole right to accept or contest such assessment.

D. Landlord shall cooperate with Tenant so that all invoices for Real Estate Taxes shall be sent directly by the taxing authority to Tenant.

E. Landlord agrees to submit to Tenant any invoices for Real Estate Taxes and notices of special assessments with respect to the Premises which are sent to Landlord within thirty (30) days after receipt by Landlord. Landlord shall furnish Tenant with copies of all Notices of Valuation of the Premises which are sent to Landlord within ten (10) days after receipt thereof and in sufficient time to allow Tenant to determine whether or not to contest any increase in Real Estate Taxes or valuation. If Tenant desires to contest such increase, Tenant shall protest such valuation or file an abatement petition within applicable statutory time periods. Landlord shall fully cooperate with Tenant in any such proceeding.

2. Proration of Taxes. If the Term shall expire on any date other than December 31st of any year, the amount payable by Tenant during the calendar year in which such termination occurs shall be prorated on the basis which the number of days from the

commencement of said tax fiscal year to and including said termination date bears to 365. A similar proration shall be made for the tax fiscal year in which the Term commences.

3. Personal Property Taxes. Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant may contest any such personal property taxes, assessments or valuations; provided, however, Tenant shall do so within the time period permitted by applicable statutes.

Article 6 Utilities

1. Utility Usage. Tenant shall assume, bear, pay, and discharge as its sole and separate obligation all of the applicable charges for all utilities consumed on the Premises. Except in the event of an emergency, neither Landlord nor Tenant shall take any action which shall interrupt or interfere with any electric, gas, water, sewage, or telephone service to the Premises or to the adjoining property owned by Landlord.

Article 7 Use, Subletting, and Assignment

1. Use. Tenant may use and occupy the Premises during the Term for all lawful uses in accordance with the requirements of this Lease (the "Permitted Uses").

2. Assignment and Subletting

A. Tenant shall have the right to sublet all or any part of the Premises or assign this Lease to a Shea Related Entity or a Qualified Assignee without the prior written consent of Landlord. For purposes of this Lease, a "Shea Related Entity" shall mean either (i) any entity directly or indirectly owned or controlled by John Shea or Peter Shea or the children or grandchildren of John Shea, Peter Shea or the late Edmund Shea, the members of their respective families, or trusts for their benefit, or (ii) any entity directly or indirectly controlling, controlled by or under the common control with any of the J.F. Shea Co., Inc., Shea Properties LLC or Shea Homes Limited Partnership. A "Qualified Assignee" shall mean a party which provides evidence reasonably satisfactory to Landlord that it has a net worth in excess of \$100,000,000.00 and has liquid assets at least equal to the Rent payable under this Lease during the twenty-four (24) months following such assignment. Upon the execution by a Shea Related Entity or a Qualified Assignee of a document reasonably satisfactory to Landlord whereby the Shea Related Entity or the Qualified Assignee, as assignee, assumes all of Tenant's obligations hereunder arising from and after the date of the assignment, Tenant shall be relieved of the obligations hereunder, and Landlord shall accept performance of such obligations by assignee. Such assignment shall be effective only on the condition that (x) at least ten (10) days prior to the effective date of such assignment, Tenant gives Landlord written notice of such assignment, and provides Landlord with evidence reasonably satisfactory to Landlord that the assignee is a Shea Related Entity or a Qualified Assignee, and (y) the assignee delivers the signed assumption agreement described in the preceding sentence. Upon the delivery of such evidence and such assumption agreement to Landlord, Landlord shall execute and deliver to Tenant and such assignee an estoppel certificate, certifying to the fact that Landlord acknowledges that (i) such assignee is either a Shea

Related Entity or a Qualified Assignee, (ii) the assigning Tenant shall be relieved of its obligations hereunder from and after the date of the assignment, and Landlord shall accept performance of such obligations by such assignee from and after that date, and (iii) unless the entire Deposit has been previously applied against Rent in accordance with Article 4.4 above, the Deposit (or the remaining portion thereof) is held by Escrow Agent, and such assignee shall succeed to the rights of the assigning Tenant with respect to the Deposit from and after the date of the assignment.

B. Except for an assignment or sublease to a Shea Related Entity or a Qualified Assignee as provided in subparagraph A above, Tenant shall have the right to sublet all or any part of the Premises or assign this Lease only upon Landlord's prior written consent which shall not be unreasonably withheld, delayed or conditioned.

C. Except for an assignment to a Shea Related Entity or a Qualified Assignee as provided in subparagraph A above, no assignment of this Lease shall relieve the assignor of any obligation under this Lease unless otherwise agreed to in writing by Landlord. In the event of any permitted assignment of this Lease to a Shea Related Entity or to any other assignee, other than a Qualified Assignee, any guaranty of this Lease shall continue and remain in full force and effect and the guarantor thereunder shall remain obligated in accordance with the terms of any such guaranty unless otherwise agreed to by Landlord in writing. In the event of any permitted assignment of this Lease to a Qualified Assignee, any guaranty of this Lease shall terminate, and the guarantor thereunder shall be released from its obligations thereunder, unless otherwise agreed to by the Parties in writing.

Article 8 Ownership of the Buildings and Other Improvements

Landlord agrees and acknowledges that Tenant intends to construct Buildings and other Improvements on or under the Premises. Notwithstanding Landlord's ownership of the Real Property, Tenant shall own the Buildings and all of the other Improvements constructed or installed by Tenant on or under the Real Property until expiration or earlier termination of the Term, subject to Tenant's exercise of the Purchase Option.

Article 9 Mechanics Liens

1. Liens. Tenant shall promptly pay when due the entire cost of all work done to the Premises by or at the request of Tenant (including but not limited to work done prior to the Effective Date) and Tenant shall keep the Premises free of liens for labor or materials as a result of Tenant's work or work performed on behalf of or at the request of Tenant. Should mechanics', materialmen's, or other liens be filed against the Premises as a result of Tenant's work or work performed on behalf of or at the request of Tenant, Tenant shall cause the lien to be canceled and discharged of record, or shall file a bond in substitution of the mechanic's lien in accordance with the provisions of Colorado Revised Statute 38-22-131, *et. seq.*, within forty-five (45) days of Tenant's receipt of notice of such lien. Notwithstanding the foregoing, Tenant

may contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien, provided that Tenant shall give to Landlord such security as Landlord may reasonably request to ensure the payment of any amounts claimed. If Tenant contests a lien or claimed lien, then on final determination of the validity of such lien or claimed lien, Tenant shall cause the lien to be released and, in the event of an adverse judgment, satisfy such judgment.

2. Protection of Landlord's Interest in Premises. Nothing in this Lease shall be construed as giving Tenant or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of any mechanics' liens or other claims against Landlord's fee interest in the Premises. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises any notices which Landlord may deem necessary for the protection of Landlord and its interest in the Premises from mechanics' liens or other claims.

Article 10 Indemnity and Insurance

1. Indemnity. From and after the Effective Date and continuing at all times thereafter during the Term hereof:

A. Tenant assumes all risk of loss, damage, or destruction to the Premises, Improvements, Buildings to be constructed on the Premises and their contents, or to any other property brought upon the Premises, Improvements, and Buildings by Tenant, or by any other person, with or without the consent or knowledge of Tenant. Tenant hereby indemnifies and agrees to protect and defend Landlord from all such loss, damage, or destruction including claims and causes of action asserted against Landlord (the "Claims") in connection with such loss, damage or destruction.

B. Tenant shall indemnify and save harmless Landlord from any and all Claims, on account of injuries to or death of any and all persons whomsoever while on the Premises, and any and all loss or destruction of or damage to the Premises, the Improvements, the Buildings and any contents and personal property located upon the Premises and owned by, rented to, or in the care, custody, or control of the parties hereto, or any of Tenant's subtenants, (i) arising or growing out of, or in any manner connected with, any use and occupancy of the Premises by Tenant or any subtenants for a Permitted Use or otherwise; (ii) caused or occasioned, in whole or in part, by reason of or arising during the presence upon the Premises of the person or the property of Tenant, its officers, employees, agents, subtenants, renters, customers, invitees, licensees, servants, contractors, subcontractors, materialmen, suppliers, workmen, laborers, and the employees and agents of each of the foregoing, or any and all other persons, invited or otherwise, with or without Tenant's consent, while on the Premises; (iii) arising out of or resulting from Tenant's development, sale or marketing of the Premises and/or the Improvements; and (iv) arising out of or resulting from any plans or designs for the Improvements prepared by or on behalf of Tenant.

C. Tenant hereby indemnifies and saves harmless Landlord and any of its officers, members, contractors and agents from any and all Claims, on account of injuries to or death of any and all persons whomsoever, and any and all loss or destruction of or damage to any real or personal property adjacent to the Premises, caused by Tenant or

any of its employees, managers, members, officers, contractors, subcontractors, materialmen, suppliers, workmen, laborers, subtenants, renters, licensees, servants or agents.

D. The foregoing indemnities shall not apply to any injuries, death, claims, losses, damages and expenses to the extent arising as a result of any negligence or intentional acts of Landlord or its officers, employees, contractors or agents.

E. Landlord hereby indemnifies and saves harmless Tenant, to the extent permitted by law, from any and all claims, losses, damages, or expenses, on account of injuries to or death of any and all persons whomsoever while on the Premises, and any and all loss or destruction of or damage to the Premises, the Improvements, the Building and any contents and personal property located upon the Premises and owned by, rented to, or in the care, custody, or control of the parties hereto, or any of Tenant's subtenants, arising from the negligence or willful misconduct of Landlord, its officers, employees, or agents.

2. Appear and Defend. Landlord and Tenant further agree, that if it is the indemnifying party, that it will appear and defend at its own expense, in the name and on behalf of the indemnified party, all claims or suits for injuries to or death of persons or loss or destruction of or damage to property arising or growing out of or in any manner connected with or caused or occasioned by or in connection with its indemnities set forth in Section 1 of this Article 10.

3. Insurance.

A. Property Damage. During the period of construction of the Improvements, Tenant shall keep or require its general contractor to keep, a policy of builders risk insurance covering loss or damage to the Improvements for the full replacement cost of all such construction, naming Tenant's Leasehold Mortgagee, if any, as a loss payee. During the Term, Tenant shall keep in full force and effect a policy of all risk, special form or equivalent form property insurance covering loss or damage to the Premises in the amount of the full replacement cost of the Building and other Improvements on the Property, in an amount at least equal to the hard costs of construction, with a deductible that is commercially reasonable in light of Tenant's financial strength, naming Tenant's Leasehold Mortgagee, if any, as a loss payee.

B. Liability Insurance. During the Term, Tenant shall keep in full force commercial general liability insurance ("CGL"), with bodily injury and property damage coverage with respect to the Premises and business operated by Tenant, which shall list Landlord and, at Landlord's written request, Landlord's first mortgagee as additional insureds as their respective interests may appear. The limits of such CGL policy shall be not less than \$2,000,000.00 in coverage through primary and/or excess insurance, with a deductible that is commercially reasonable in light of Tenant's financial strength. The required CGL policy limit for bodily injury and property damage requirement may be increased by Landlord, but not more than once in any three (3) year period, to a commercially prudent and reasonable amount, based upon the then current general liability insurance conditions prevailing in the metropolitan Denver market.

C. Workers' Compensation Insurance. To the extent required by law, Tenant shall maintain workers' compensation insurance covering its employees in statutory limits, naming Tenant's Leasehold Mortgagee, if any, as a loss payee.

D. Automobile Liability. Tenant shall maintain at all times during the Term liability insurance covering liability arising out of the use of (i) all Tenant owned vehicles, (ii) all vehicles hired or leased by Tenant and (iii) all non-owned and borrowed vehicles.

E. Form of Policies. All insurance required by this Section shall be with insurers licensed or otherwise permitted to conduct business in the state in which the Premises are located. Any insurance hereunder may be provided under blanket policies of insurance. During the last two (2) Lease Years of any Extension Option period following the expiration of the First Extension Option Period, property insurance maintained by Tenant pursuant to Article 10.3.A shall list Tenant as insured and Landlord as additional insured, as their interests may appear in accordance with Section 11.3, and, so long as the Premises are mortgaged pursuant to a mortgage of which Tenant has received written notice, shall be subject to a standard mortgagee clause in favor of Landlord's first mortgagee. All insurance maintained by Tenant pursuant to subparagraph B of this Section shall list Tenant as insured and Landlord as additional insured, as their interests may appear, and, so long as the Premises are mortgaged pursuant to a mortgage of which Tenant has received written notice, shall be subject to a standard mortgagee clause in favor of Landlord's first mortgagee.

F. Policy Provisions. All policies of insurance (other than self-insurance) enumerated above shall be provided by insurance carriers having at policy commencement a Best rating of not less than A- VIII; provided, however, that if the rating of any such insurer falls below such level, such rating reduction shall not constitute a default hereunder provided all renewals of such policies shall be with carriers with a Best rating of not less than A- VIII at the time of such renewal. An increased coverage or "umbrella" policy may be provided and utilized by either Party to increase the coverage provided by individual or blanket policies in lower amounts, and the aggregate coverage provided by all such policies with respect to the Premises and Tenant's liability hereunder shall be satisfactory provided that such policies otherwise comply with the provisions of this Article 10.

G. Waiver of Right of Recovery and Subrogation. With respect to any loss covered by insurance or required to be covered by insurance hereunder, Landlord and Tenant hereby waive any and all rights of recovery against each other for any loss or damage to the Premises or the contents contained therein, or for loss of income on account of fire or other casualty; and each Party's aforesaid policies of insurance shall, to the extent available, contain appropriate provisions recognizing this mutual release and waiving all rights of subrogation by the respective insurance carriers.

H. Evidence of Insurance. On or before the Commencement Date, Tenant shall cause to be issued to Landlord certificates of insurance evidencing compliance with the applicable covenants of this Article 10. Tenant shall use commercially reasonable efforts to obtain from the insurer a certificate which provides that the certificate holder will be given at least thirty (30) days' notice prior to cancellation; provided, however, if Tenant is unable

to obtain such provision, then Tenant agrees to provide to Landlord at least thirty (30) days' notice of any anticipated cancellation of an existing insurance policy.

Article 11 Damage or Destruction

1. Subject to Landlord's right as provided in Section 11.3, if the Premises or any of the Improvements are damaged or destroyed during the Initial Term or any Extension Option period by a fire or other casualty ("Casualty"), this Lease shall continue in effect, and Tenant shall continue to pay the Rent without abatement. Tenant shall remove and dispose of all hazardous materials in accordance with applicable legal requirements and take such action as may be required under applicable municipal ordinances and other laws, rules and regulations with respect to any damage or destruction of Tenant's Improvements. Tenant shall not have any obligation to repair and/or rebuild Tenant's Improvements damaged by fire or other casualty or cause. Tenant shall promptly provide a sightly barrier and shall remove all debris from the damaged portion of Tenant's Improvements and use diligent efforts to place the Premises in an orderly and safe condition. If requested by Landlord should Tenant elect not to rebuild, Tenant shall, at its sole cost and expense, raze and remove any remaining portion of Tenant's Improvements and fill and grade the Premises in a safe and sightly manner as near as practicable to its condition on the Commencement Date, or seed such portion of the Premises as designated by Landlord.

2. In the event Tenant elects to repair and/or rebuild the Improvements, if the cost of such repair or restoration shall be less than the insurance proceeds paid as a result of the Casualty, Tenant shall be entitled to retain the balance of such proceeds to the extent not required to be applied to any Leasehold Mortgage. Tenant shall complete all work promptly after the occurrence of the Casualty. All repair and/or restoration work shall be performed in a good and workmanlike manner and shall be subject to all provisions of this Lease applicable to construction of the Improvements.

3. In the event the Casualty occurs during the last two Lease Years of any Additional Extension Option period, if Tenant elects not to repair and/or rebuild and gives written notice of such election to Landlord within one hundred twenty (120) days of the date of the Casualty, Landlord shall have the option, exercised by written notice to Tenant on or before the earlier of (a) one hundred twenty (120) days following written notice from Tenant of its election not to repair and/or rebuild, or (b) two hundred forty (240) days following the date of the Casualty, to (i) continue the Lease to the end of the then-current additional Extension Option period, in which case there shall be no abatement of Rent, and the insurance proceeds shall be paid to Tenant except to the extent required to pay off and discharge any Leasehold Mortgage, or (ii) to terminate the Lease effective as of one hundred twenty (120) days following the date of the Casualty, in which case the insurance proceeds shall be paid to Landlord except to the extent required to pay off and discharge any Leasehold Mortgage. Promptly following the Casualty, Tenant shall promptly provide a sightly barrier and shall remove and dispose of all hazardous materials in accordance with applicable legal requirements, take such action as may be required under applicable municipal ordinances and other laws, rules and regulations with respect to any damage to or destruction of Tenant's Improvements, and shall use diligent efforts to place the Premises in an orderly, clean and safe condition. If Tenant does not elect to repair and/or

rebuild, Tenant shall, if requested by Landlord, at its sole expense (using any insurance proceeds to the extent applicable), remove and raze the portion of the Premises which is damaged, remove and dispose of all hazardous materials in accordance with applicable legal requirements, and, at Landlord's election, fill and grade the Premises in a safe, clean and sightly manner. Any remaining insurance proceeds shall then be used to pay off and discharge any Leasehold Mortgage, and the balance, if any, shall be paid to Landlord. In the event Landlord enters into a subordination agreement with Tenant's Leasehold Mortgagee, notwithstanding any provision in the agreement to the contrary, in no event shall the right of Landlord or Tenant to use insurance proceeds to remove and raze the damaged portion or remove and dispose of hazardous materials be deemed subordinated to the rights of such Leasehold Mortgagee.

Article 12 Eminent Domain

1. Definition of Taking and Substantial Taking. For purposes of this Lease, a "**Taking**" shall mean any condemnation or exercise of the power of eminent domain by any authority vested with such power or any other taking for public use, including a private purchase in lieu of condemnation by an authority vested with the power of eminent domain; the "**Date of Taking**" shall mean the earlier of the date upon which title to the Premises or any portion thereof or any right appurtenant thereto so taken is vested in the condemning authority or the date upon which possession of the Premises or any portion thereof is taken by the condemning authority; and "**Substantially All of the Premises**" shall mean so much of the Premises or the rights appurtenant thereto as, when taken, leaves the untaken portion unsuitable in Tenant's reasonable opinion for the continued feasible and economic operation and use of the Premises by Tenant as existed immediately prior to such Taking or as contemplated herein.

2. Tenant's Rights Upon Taking or Substantial Taking. Each Party agrees to furnish the other a copy of any notice of a threatened or proposed Taking received by such Party. In the event of a Taking of Substantially All of the Premises, this Lease shall terminate and both Landlord and Tenant shall be relieved from all further obligations hereunder from and after the Date of Taking. All Rent and other sums payable by Tenant hereunder shall be apportioned and paid through and including the Date of Taking, and neither Landlord nor Tenant shall have any rights in any compensation or damages payable to the other in connection with such Taking.

3. Tenant's Rights Upon Less Than Substantial Taking. In the event of a Taking of less than Substantially All of the Premises, Rent and other charges shall be reduced fairly and equitably in accordance with the portion condemned or taken, effective as of the Date of Taking, and Tenant shall make all necessary restorations to the Improvements so that the portions of the Improvements not taken constitute a complete architectural unit, and the proceeds of the award attributable to the value of the Improvements Taken shall be retained by Tenant. If any Taking of less than Substantially All of the Premises occurs following the expiration of the First Extension Option and such Taking has a material impact on Tenant's ability to conduct its operations in the Premises as reasonably determined by Tenant, this Lease shall terminate at Tenant's option, which option shall be exercised by Tenant giving not less than thirty (30) days' prior written notice to Landlord, such notice to be given not more than sixty (60) days after Tenant's receipt of notice of the impending Taking.

4. Rights Upon Temporary Taking. Notwithstanding the foregoing, in the event of a Taking of the Premises or any portion thereof, for temporary use (specifically one not exceeding one hundred eighty (180) days in duration), without the taking of the fee simple title thereto, this Lease shall remain in full force and effect, and there shall be no abatement of Rent during such period. All awards, damages, compensation and proceeds payable by the condemnor by reason of such Taking relating to the Premises for periods prior to the expiration of the Lease shall be payable to Tenant. All such awards, damages, compensation and proceeds for periods after the expiration of the Lease shall be payable to Landlord. Anything contained in this Section 12.4 to the contrary notwithstanding, a temporary Taking for any period in excess of one hundred eighty (180) days may, at Tenant's option, be deemed a permanent Taking and shall be governed by Article 12.2 or 12.3 above, as applicable.

5. Award. The award paid by the condemning authority (other than a Taking for temporary use) shall be allocated as follows:

- a) First to the Landlord in an amount equal to the value of the Premises (on the basis of unimproved land not encumbered by this Lease)
- b) Next to Tenant in an amount equal to the value of Tenant's leasehold interest and Improvements, subject to the rights of any Leasehold Mortgagee. If this Lease is not terminated, the award for the cost of restoring the Improvements shall be payable to Tenant, subject to the rights of any Leasehold Mortgagee.
- c) Any other award permitted by law shall be payable to Landlord and Tenant as their respective interests may appear.

Landlord and Tenant shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a taking or intended taking by power of condemnation and to make full proof of their claims. Tenant shall have the sole right to control the defense, prosecution and settlement of its claim to the extent the condemnation proceeding or negotiation affects Tenant's leasehold interest hereunder and/or the Improvements, subject to the consent of any Leasehold Mortgagee. Landlord shall have the sole right to control the defense, prosecution and settlement of its claim to the extent the condemnation proceeding or negotiation affects Landlord's reversionary interest in the Premises and/or Improvements. Landlord and Tenant each agrees to execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

Article 13 Default

1. Events of Tenant's Default. Any of the following occurrences, conditions or acts by Tenant shall constitute an "Event of Default" under this Lease:

- A. Failure to Pay Rent; Breach. (i) Tenant's failure to make any payment of money required by this Lease (including without limitation Rent or Real Estate Taxes) (subject to Tenant's right of good faith contest with respect to Real Estate Taxes, as set forth in and as limited by Article 5), within thirty (30) days after the receipt of written notice from

Landlord to Tenant that same is overdue (“**Monetary Default**”), in which event such delinquent amount shall accrue interest at the Default Rate; or (ii) Tenant's failure to observe or perform any other material provision of this Lease within thirty (30) days after receipt of written notice from Landlord to Tenant specifying such default and demanding that the same be cured (“**Non-Monetary Default**”); provided that, if such default cannot with due diligence be wholly cured within such thirty (30) day period, Tenant shall have such longer period as is reasonably necessary to cure the default, so long as Tenant proceeds promptly to commence the cure of same within such thirty (30) day period and diligently prosecutes the cure to completion. In no event shall Landlord be required to give more than one notice of a monetary default during any twelve (12) month period, and in the event one such notice has been given, Tenant shall be in default if any payment is not made when due, no notice shall be required, and interest shall accrue at the Default Rate from the date such payment was due until paid.

B. Bankruptcy. Any petition is filed by or against Tenant under any section or chapter of the Federal Bankruptcy Code, and, in the case of a petition filed against Tenant, such petition is not dismissed within sixty (60) days after the date of such filing.

C. Insolvency. Tenant becomes insolvent or transfers property in fraud of creditors.

D. Assignment for Benefit of Creditors. Tenant makes an assignment for the benefit of creditors.

E. Receivership. A receiver is appointed for any of Tenant's assets.

F. Attachment. This Lease or Tenant's interest in the Premises or any part thereof is taken by attachment, execution or other process of law, and such attachment, execution or other process has not been released within sixty (60) days thereafter.

G. Lien. Tenant fails to obtain a release of any lien against the Premises as required under the terms of this Lease.

In the event Tenant continues to pay Rent as required under the terms of this lease, no Event of Default shall occur solely as a result of Tenant's bankruptcy, insolvency, assignment for benefit of its creditors, or the appointment of a receiver for any of Tenant's assets.

2. Landlord's Remedies. After the occurrence of an Event of Default by Tenant, Landlord shall have the right to institute from time to time an action or actions (i) to recover damages (exclusive of consequential or special damages), (ii) for injunctive and/or other equitable relief, and (iii) in the event of Monetary Default only, to recover possession of the Premises and terminate this Lease.

A. Monetary Default. In the event of a Monetary Default:

(i) Continue Lease. Landlord may, at its option, continue this Lease in full force and effect, without terminating Tenant's right of possession of the Premises, in which event Landlord shall have the right to collect Rent and other charges when due, including

any sums due for any option period for which an extension option has been exercised, together with Landlord's reasonable attorneys' fees and interest at the Default Rate from the date such payment was due until the date paid by Tenant. In the alternative, Landlord shall have the right, at its option to make any payment, such as taxes, otherwise required to be made by Tenant, in which event such payment shall not be deemed a cure of Tenant's default, and Tenant shall reimburse Landlord for any such payment, together with reasonable attorneys' fees and interest at the Default Rate from the date Landlord makes such payment to the date Landlord receives such reimbursement. Landlord shall have the right to peaceably re-enter the Premises, without such re-entry being deemed a termination of the Lease or an acceptance by Landlord of a surrender thereof. Landlord shall also have the right, at its option, from time to time, without terminating this Lease, to relet the Premises, or any part thereof, with or without legal process, as the agent, and for the account, of Tenant upon such terms and conditions as Landlord may deem advisable, in which event the rents received on such reletting shall be applied (i) first to the reasonable and actual expenses of such reletting and collection, including without limitation necessary renovation and alterations of the Premises, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions and consulting fees paid, and (ii) thereafter toward payment of all sums due or to become due to Landlord hereunder. If a sufficient amount to pay such expenses and sums shall not be realized, in Landlord's exercise of commercially reasonable efforts to mitigate its damages (which Landlord hereby agrees to make), then Tenant shall pay Landlord any such deficiency monthly, and Landlord may bring an action or actions therefor as such monthly deficiency shall arise and accrue. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Premises in excess of the rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth below.

(ii) Terminate Lease. Landlord may terminate this Lease by written notice to Tenant specifying a date therefor, which shall be no sooner than thirty (30) days following receipt of such notice by Tenant, and this Lease shall then terminate on the date so specified as if such date had been originally fixed as the expiration date of the Term. In the event of such termination, Landlord shall be entitled to recover from Tenant all of the following as damages:

(A) The "worth at the time of the award payment" (defined below) of any obligation which has accrued prior to the date of termination.

(B) The "worth at the time of the award payment" of the amount by which the unpaid Rent and all other charges which would have accrued after termination until the time of award payment exceeds the amount of any sums (net of reletting costs and expenses) actually received by Landlord from the Premises after termination. Landlord shall have an affirmative obligation to attempt to mitigate its damages following termination, until the time of the award payment.

(C) The "worth at the time of the award payment" of the amount by which the Rent and all other charges which would have accrued after the time

of the award payment for the remaining term of this Lease exceeds the Fair Market Rent ("FMR"), determined in the manner set forth below, for the remaining Term of this Lease. The FMR, as used in this Lease, shall be the fair market rent of the Premises, net of market brokerage commissions and consulting fees, as of the time of the award for a term equal to the remaining term of this Lease subsequent to the time of the award payment (assuming this lease had not been terminated) on an "as is" basis, as determined by a licensed MAI appraiser selected by Landlord. At Tenant's option, Tenant may select an additional licensed MAI appraiser to estimate FMR and Tenant's appraiser and Landlord's appraiser shall select a third MAI appraiser to estimate the FMR, in which case the FMR shall be the median of the three appraisals. Tenant shall bear the cost of the appraisal process.

As used in this Article 13.2, the term, "**worth at the time of the award payment**", shall be computed by allowing simple interest at an accrual rate equal to the Default Rate for past due obligations, and a discount rate to net present value at the time of the award payment of five percent (5%) per annum on anticipated future obligations or revenues, and mitigation amounts, with no interest or discount, on the amount of the obligations payable on the date of such calculation. In the event this Lease shall be terminated as provided above, by summary proceedings or otherwise, Landlord, its agents, servants or representatives may immediately or at any time thereafter peaceably re-enter and resume possession of the Premises and, at Tenant's expense, remove all persons and property therefrom, by summary dispossession proceedings.

(iii) Reimbursement of Landlord's Costs in Exercising Remedies.

Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, as Additional Rent, such reasonable and actual expenses as Landlord may incur in recovering possession of the Premises, placing the same in good order and condition and repairing the same for reletting, and all other reasonable and actual expenses, commissions and charges incurred by Landlord in exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including without limitation reasonable attorneys' fees), provided that in no event shall Tenant be obligated to compensate Landlord for any speculative or consequential damages caused by Tenant's failure to perform its obligations under this Lease.

B. Remedies Are Cumulative. The various rights and remedies reserved to Landlord herein are cumulative, and Landlord may pursue any and all such rights and remedies, in addition to any other rights or remedies available at law or in equity, whether at the same time or otherwise (to the extent not inconsistent with specific provisions of this Lease). Notwithstanding anything herein to the contrary, Landlord expressly waives its right to forcibly dispossess Tenant from the Premises, whether peaceably or otherwise, without judicial process, such that Landlord shall not be entitled to any "commercial lockout" or any other provisions of applicable law which permit landlords to dispossess tenants from commercial properties without the benefit of judicial review.

C. Mitigation of Damages. In the event Landlord elects to terminate the Lease and seek damages from Tenant as provided herein, Landlord will use reasonable efforts to mitigate its damages. Landlord shall have the option but not the obligation to list the Premises for lease with a real estate broker. In the event Landlord elects not to so list the

property but instead elects to itself market the Property for lease, such election shall not be deemed to constitute a failure by Landlord to mitigate. Landlord will not be obligated to accept less than the then current market rent for the Premises; deviate from its then established guidelines for tenants including without limitation use, experience, reputation, and creditworthiness; lease less than all of the Premises; extend the term of this Lease; or expend any money on behalf of a new tenant. Tenant will not have any independent, affirmative claim against Landlord on account of Landlord's failure to mitigate its damages; however, such failure to mitigate may be asserted by Tenant as a defense to a claim by Landlord to the extent allowed by law.

D. Waiver of Landlord's Lien. Landlord hereby waives any statutory liens and any rights of distress with respect to Tenant's Property (as defined below) from time to time located on the Premises. This Lease does not grant a contractual lien or any other security interest to Landlord or in favor of Landlord with respect to Tenant's Property. Landlord further agrees, without cost to Tenant, to execute and deliver such instruments reasonably requested by Tenant from time to time to evidence the aforesaid waiver of Landlord. As used herein the term "Tenant's Property" shall mean all movable partitions, business and trade fixtures, machinery and equipment, automobiles, computers, furniture, satellite dish(s), signage, communications equipment and office equipment, and all furniture, furnishings and other articles of personal property owned by Tenant and located in the Premises.

3. Landlord's Default. In the event Landlord shall at any time be in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Landlord hereunder and any such default shall continue for a period of sixty (60) days after written notice to Landlord (or if such default is incapable of being cured in a reasonable manner within sixty (60) days and if Landlord has not commenced to cure the same within said sixty (60) day period and thereafter diligently prosecutes the same to completion), and Landlord shall not thereafter cure such default, Tenant shall be entitled, at its election, to bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement devolving upon Landlord, in addition to all remedies otherwise provided in this Lease and otherwise available at law or in equity under the laws of the United States or the State of Colorado.

4. Attorneys' Fees In the event that either Landlord or Tenant commences any suit for the collection of any amounts for which the other may be in default or for the performance of any other covenant or agreement hereunder, the prevailing Party in any such action shall be awarded its costs and expenses, including, but not limited to, all attorneys' fees and expenses incurred in enforcing such obligations and/or collecting such amounts, from the other Party to such action.

5. Waiver of Consequential Damages. In no event shall either Landlord or Tenant have the right to recover consequential damages of any kind from the other. Except as limited hereinabove, all rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord or Tenant shall deem necessary. In the event of a default by Tenant, nothing contained herein shall preclude, or be deemed a waiver, of Landlord's right to recover damages arising from its ownership or operation of the property owned by it adjacent to the Premises.

Article 14
Covenant of Quiet Enjoyment

Landlord agrees that Tenant shall quietly and peaceably hold, possess, and enjoy the Premises, without any hindrance or molestation by the agents or employees of Landlord, and further, Landlord shall, subject to any additional exceptions created by Tenant or created by Landlord and approved by Tenant, defend the title to the Premises and the use and occupancy of the same by Tenant against the lawful claims of all persons whosoever, except those claiming by or through Tenant.

Article 15
Subordination; Landlord's Right to Mortgage and Convey Premises

Landlord may mortgage its interest in the Premises, provided such mortgage expressly provides that the rights and interests of the mortgagee thereunder are subject and subordinate to the rights and interests of Tenant hereunder and the rights of any Leasehold Mortgagee under any Leasehold Mortgage then or thereafter existing. Should Landlord sell, convey, or transfer its interest in the Premises or should any mortgagee of Landlord succeed to Landlord's interest through foreclosure or deed in lieu thereof, Tenant shall attorn to such succeeding party as its landlord under this Lease promptly upon any such succession, provided such succeeding party assumes all of Landlord's duties and obligations under this Lease. Such succeeding party shall not be liable for any of Landlord's obligations and duties hereunder prior to its assumption of Landlord's duties and obligations hereunder.

Article 16
Transfers by Landlord

No transfer or sale of Landlord's interest hereunder shall release Landlord from any of its obligations or duties hereunder prior thereto. Landlord shall be released of any ongoing obligations hereunder from and after the date of such transfer and only upon the assumption of all such obligations and duties by the transferee of Landlord. Notwithstanding anything contained herein to the contrary, in no event shall Landlord have the right to transfer, in any manner whatsoever, or to sell its interest hereunder prior to delivery of possession of the Premises to Tenant.

Article 17
Miscellaneous

1. Non-Waiver of Default. No acquiescence by either Party to any default by the other Party shall operate as a waiver of its rights with respect to any other breach or default, whether of the same or any other covenant or condition.

2. Recording. This Lease shall not be recorded. The parties shall execute, acknowledge, and deliver to each other duplicate originals of a short form or memorandum of this Lease ("Memorandum of Lease") in substantially the form of Exhibit B attached hereto and incorporated herein, describing the Premises and setting forth the Term of this Lease. The Memorandum of Lease shall be recorded at Tenant's expense. In the event Tenant records this Lease, this Lease shall automatically be deemed terminated and of no further force or effect. If

this Lease is terminated, upon request of Landlord, Tenant will execute and deliver to Landlord a termination of the Memorandum of Lease suitable for recording.

3. Notice. Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either Party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other Party as follows:

- If to Tenant: Central Park at Highlands Ranch, LLC
6380 South Fiddlers Green Circle
Suite 400
Greenwood Village, CO 80111
Attention: Peter A. Culshaw

- With copies to: Shea Properties
6380 South Fiddlers Green Circle
Suite 400
Greenwood Village, CO 80111
Attention: Jeffrey H. Donelson, Esq.

- If to Landlord: Englewood/McLellan Reservoir Foundation
1000 Englewood Parkway
Englewood, Colorado 80110
Attention: President

- With copies to: Berenbaum Weinshienk PC
370 17th Street, 48th Floor
Denver, Colorado 80202
Attention: H. Michael Miller, Esq.

- And copies to: City of Englewood
1000 Englewood Parkway
Englewood, Colorado 80110
Attention: City Attorney

or at such other address as may be specified from time to time in writing by either Party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

4. Successors and Assigns. All covenants, promises, conditions, representations, and agreements herein contained shall be binding upon, apply to, and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors (including subtenants), and permitted assigns.

5. Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, the remainder of this Lease or the

application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

6. Interpretation. In interpreting this Lease in its entirety, any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either Party hereto. This Lease shall be construed without regard to any presumption or other rule requiring construction against the Parties causing this Lease to be drafted.

7. Headings, Captions, and References. The section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof," "hereunder," and "herein" shall refer to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The terms "include," "includes," and "including" incorporate the meaning "without limitation." The use of the masculine or neuter genders herein shall include the masculine, feminine, and neuter genders and the singular form shall include the plural when the context so requires.

8. Governing Law. This Lease shall be construed under the laws of the State of Colorado.

9. Execution of Documents. Landlord and Tenant shall each cooperate with the other and execute such documents as the other Party may reasonably require or request so as to enable it to conduct its operations, so long as the requested conduct or execution of documents does not derogate or alter the powers, rights, duties, and responsibilities of the respective Parties.

10. Force Majeure. Whenever a Party is required to perform an act under this Lease by a certain time, unless specifically provided otherwise in this Lease, such Party may extend the deadline in the event of Excusable Delay. In the event a Party elects to so extend a deadline, such Party shall first give written notice to the other Party within twenty (20) days following the commencement of the Excusable Delay setting forth the event giving rise to the Excusable Delay. The Party electing to extend the deadline shall within twenty (20) days following the end of the Excusable Delay give an additional written notice to the other Party setting forth the number of days the period has been extended as a result of the Excusable Delay and the details of such delay.

11. Authority. No agreement, including but not limited to an agreement to amend or modify this Lease or to accept surrender of the Premises, shall be deemed binding upon either Party, unless in writing and signed by an officer of the Party against whom the agreement is to be enforced or by a person designated in writing by such Party as so authorized to act. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord and satisfaction unless expressly agreed to by Landlord acting through its authorized representative, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy then available to Landlord.

12. Estoppel Certificate. Each Party agrees, from time to time, within twenty (20) days following written request from the other Party, to execute and deliver an estoppel stating

that this Lease is in full force and effect, and if modified or amended, setting forth such modification or amendment, that no default exists, or if a default, setting forth the same, and such other factual matters regarding the Lease as may be reasonably requested, provided such estoppel does not obligate the Party to acknowledge or consent to any modifications or interpretations of this Lease not previously agreed upon by both parties in writing.

13. Holding Over. Should Tenant hold over, without Landlord's consent, after the Lease Term has expired and continue to pay Rent, Tenant shall become a month-to-month tenant only. In no event shall such hold over constitute an extension of the Term of this Lease. During such hold over, the Rent shall be an amount equal to one hundred fifty percent (150%) of the Rent during the last month of the Term of the Lease, together with all other amounts payable by Tenant under the terms of the Lease. None of the terms of this Paragraph or the holding over by Tenant shall constitute a waiver of any rights of Landlord to terminate the Lease at any time and to re-enter and take possession of the Premises. Tenant shall reimburse Landlord and indemnify Landlord against all damages incurred by Landlord resulting from any delay by Tenant in surrendering possession of the Premises.

14. Broker. Each Party warrants and represents to the other that they have not engaged any broker or finder with regard to the transactions contemplated by this Lease. Each Party hereby indemnifies and agrees to hold the other Party harmless from all damages, claims, liabilities or expenses, including reasonable and actual attorneys' fees (through all levels of proceedings), resulting from any claims that may be asserted against the other Party by any real estate broker or finder with whom the indemnifying Party either has or is purported to have dealt.

15. Reasonable Consent. Except as expressly provided otherwise in this Lease, in all cases where consent or approval shall be required pursuant to this Lease, the giving of each consent or approval shall not be unreasonably withheld, conditioned or delayed by the Party from whom such consent is required or requested.

16. No Annexation of Fee Interest Without Landlord Consent. Tenant shall be entitled, without the necessity for any consent by Landlord, to annex the leasehold interest in the Premises created by this Lease to: (i) the Community Declaration for Highlands Ranch Community Association, Inc., dated September 1, 1981, and recorded September 17, 1981 in Book 421 at Page 924 of the records in the office of the Clerk and Recorder of Douglas County, Colorado, as the same has been, and hereafter may be, amended from time to time (the "**Community Declaration**"); and (ii) the Subassociation Declaration for Highlands Ranch Business Park, Inc. of Highlands Ranch Community Association, Inc. dated February 14, 1989, recorded February 21, 1989 in Book 841 at Page 1115 of those records, as amended by the Amendment of Subassociation Declaration for Highlands Ranch Business Park, Inc., dated June 7, 1990, recorded June 11, 1990, in Book 916 at Page 49 of those records, as the same has been, and hereafter may be, amended from time to time (the "**Business Park Declaration**"). However, Tenant shall have no authority to annex the fee interest in the Premises to either the Community Declaration or the Business Park Declaration without the prior written consent of Landlord, which may be given or withheld in Landlord's sole discretion.

Article 18
Leasehold Financing

1. Mortgage by Tenant. Tenant may, from time to time, hypothecate, mortgage, pledge, or alienate the Improvements and/or Tenant's leasehold estate and rights hereunder. Such lien shall be referred to herein as a "**Leasehold Mortgage**" and the holder or holders of any such lien shall be referred to herein as a "**Leasehold Mortgagee.**" The Leasehold Mortgagee's interest in the Premises and this Lease shall be subordinate, junior and subject to Landlord's ownership of the Premises and interest in this Lease. A Leasehold Mortgage shall encumber no interest in the Premises other than Tenant's interest in the Lease and the Improvements located on the Premises, including any personal property of Tenant, and any subleases of portions of the Premises. A Leasehold Mortgagee or its assigns may enforce such lien and acquire title to the leasehold estate in any lawful way and, pending foreclosure of such lien, the Leasehold Mortgagee may take possession of and operate the Premises, performing all obligations performable by Tenant, and upon foreclosure of such lien by power of sale, judicial foreclosure, or acquisition of the leasehold estate by assignment in lieu of foreclosure, the Leasehold Mortgagee may sell and assign the leasehold estate hereby created. Notwithstanding anything herein contained to the contrary, the Leasehold Mortgagee or any person or entity acquiring such leasehold estate shall be liable to perform the obligations imposed on Tenant by this Lease only during the period such person has ownership of said leasehold estate or possession of the Premises; provided further that, except as expressly provided herein, in no event shall Landlord's rights be impaired to exercise its remedies following an Event of Default prior to Leasehold Mortgagee's possession or ownership. Landlord agrees to provide an estoppel to any Leasehold Mortgagee upon written request therefor, provided such estoppel does not obligate Landlord to acknowledge or consent to any modifications or interpretations of this Lease not previously agreed upon by both parties in writing.

2. Notice To and Rights Of Leasehold Mortgagees.

A. When giving notice to Tenant with respect to any default hereunder, Landlord shall also serve a copy of such notice upon any Leasehold Mortgagee who shall have given Landlord a written notice specifying its name and address. No such notice shall be effective against any Leasehold Mortgagee unless and until served on any Leasehold Mortgagee as herein provided. In the event Tenant shall default in the performance of any of the terms, covenants, agreements, and conditions of this Lease to be performed on Tenant's part, any Leasehold Mortgagee shall have the right, within the grace period available to Tenant for curing such default or such additional time as may be granted to any Leasehold Mortgagee herein, to cure or make good, such default or to cause the same to be cured or made good, whether the same consists of the failure to pay Rent or the failure to perform any other obligation, and Landlord shall accept such performances on the part of any Leasehold Mortgagee as though the same had been done or performed by Tenant.

B. In the case of a Monetary Default by Tenant, Landlord will take no action to effect a termination of this Lease by reason thereof unless such default has continued beyond forty-five (45) days after Landlord shall have served a copy of notice of such default upon Tenant and any Leasehold Mortgagee who has given Landlord notice as provided in Article 18.2.A, it being the intent hereof and the understanding of the parties

that any Leasehold Mortgagee shall be allowed not less than fifteen (15) days in addition to the thirty (30) days granted to Tenant to cure any Monetary Default of Tenant.

C. In the case of any Non-Monetary Default by Tenant, a Leasehold Mortgagee shall be allowed, in addition to any grace period granted to Tenant, an additional time as hereinafter specified to cure such Non-Monetary Default within which either:

a) if such default is capable of being cured by the payment of money or is otherwise susceptible of being cured by the Leasehold Mortgagee without obtaining possession of the Premises, to commence and diligently proceed to cure such Non-Monetary Default within thirty (30) days following the expiration of any grace period granted to Tenant, or if such default cannot reasonably be cured within thirty (30) days, to commence such cure within thirty (30) days following the expiration of any grace period granted to Tenant and to diligently prosecute the cure to completion;

b) if such default is not susceptible of being cured by the Leasehold Mortgagee without obtaining possession of the Premises, to commence proceedings to obtain possession of the Premises within thirty (30) days following the expiration of any grace period granted to Tenant and diligently prosecute such action to completion (including possession by a receiver) and to cure such default within thirty (30) days following possession or the appointment of a receiver in the case of a default which is susceptible of being cured within thirty (30) days when the Leasehold Mortgagee has obtained possession thereof. If such default can not reasonably be cured within thirty (30) days following possession or appointment of a receiver, to commence such cure within thirty (30) days following possession or appointment of a receiver and to diligently prosecute the cure to completion.

D. In the event that this Lease is terminated by Landlord on account of any default, Landlord shall give prompt notice thereof to each Leasehold Mortgagee who has given notice to be notified. Landlord, within thirty (30) days after receiving a written request therefor, which shall be given within sixty (60) days after such termination, will execute and deliver a new lease of the Premises to the Leasehold Mortgagee or its nominee or to the purchaser, assignee, or transferee, as the case may be, for the remainder of the Term, containing the same covenants, agreements, terms, provisions, and limitations as are contained herein, provided that the Leasehold Mortgagee shall (i) pay to Landlord, simultaneously with the delivery of such new lease, all unpaid rental due under this Lease up to and including the date of the commencement of the term of such new lease and all expenses including, without limitation, reasonable attorneys' fees and disbursements and court costs incurred by Landlord in connection with the default by Tenant and the termination and the preparation of the new lease, and (ii) the Leasehold Mortgagee shall commence and diligently proceed to cure all defaults existing under this Lease which are susceptible to cure.

E. The time available to a Leasehold Mortgagee to initiate foreclosure proceedings as aforesaid shall be deemed extended by the number of days of delay of

occasioned by judicial restriction against such initiation or occasioned by other circumstances beyond the Leasehold Mortgagee's control.

F. During the period that a Leasehold Mortgagee shall be in possession of the Premises and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all charges of whatsoever nature payable by Tenant hereunder which have been accrued and are unpaid and which will thereafter accrue during said period. Following the acquisition of Tenant's leasehold estate by the Leasehold Mortgagee or its designee, either as a result of foreclosure or acceptance of an assignment in lieu of foreclosure, Landlord's right to effect a termination of this Lease based upon the default in question shall be deemed waived. Any default not susceptible of being cured by the Leasehold Mortgagee or party acquiring title to Tenant's leasehold estate shall be and shall be deemed to have been waived by Landlord upon completion of the foreclosure proceedings or acquisition of Tenant's interest in this Lease by any purchaser (who may, but need not be, the Leasehold Mortgagee) at the foreclosure sale, or who otherwise acquires Tenant's interest from the Leasehold Mortgagee or by virtue of a Leasehold Mortgagee's exercise of its remedies. Any such purchaser, or successor of purchaser, shall assume Tenant's obligations under this Lease which accrue subsequent to acquiring such interest, but shall not be liable to perform the obligations imposed on Tenant by this Lease incurred or accruing after such purchaser or successor no longer has ownership of the leasehold estate or possession of the Premises.

G. Nothing herein shall preclude Landlord from exercising any of Landlord's rights or remedies with respect to any other default by Tenant during any period of any such forbearance, subject to the rights of any Leasehold Mortgagee as herein provided.

H. In the event two or more Leasehold Mortgagees each exercise their rights hereunder and there is a conflict which renders it impossible to comply with all such requests, the Leasehold Mortgagee whose leasehold mortgage would be senior in priority if there were a foreclosure shall prevail. In the event any Leasehold Mortgagee pays any rental or other sums due hereunder which relate to periods other than during its actual ownership of the leasehold estate, such Leasehold Mortgagee shall be subrogated to any and all rights which may be asserted against Landlord with respect to such period of time.

I. Upon the reasonable request of any Leasehold Mortgagee, Landlord and Tenant shall cooperate in including in this Lease by suitable amendment or separate agreement from time to time any provision for the purpose of implementing the protective provisions contained in this Lease for the benefit of such Leasehold Mortgagee in allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of its proposed Leasehold Trust Deed on the occurrence of an Event of Default under the terms of this Lease. Landlord and Tenant shall execute, deliver, and acknowledge any amendment or separate agreement reasonably necessary to effect any such requirement; provided, however, that any such amendment or separate agreement shall not in any way affect the Term or Rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

J. Tenant shall reimburse Landlord any attorneys' fees or other direct out of pocket costs incurred in connection with any lease amendments or other documentation or review in connection with Tenant's proposed Leasehold Mortgage.

Article 19
Representations of Landlord and Tenant

1. Representations of Landlord. Except as otherwise disclosed on Schedule 1 attached hereto, Landlord represents and warrants to Tenant that, as of the Effective Date:

A. Landlord is a non-profit corporation validly organized and existing under the laws of the State of Colorado. Landlord has the full right, power and authority to enter into this Agreement and to perform Landlord's obligations hereunder.

B. This Agreement (i) has been duly authorized, executed, and delivered by Landlord; and (ii) is the binding obligation of Landlord;

C. Landlord has not granted, other than to Tenant, any outstanding option, right of first refusal or any preemptive right with respect to the purchase of all or any portion of the Premises.

D. To the best of Landlord's knowledge, the Premises and use and occupancy thereof is not in violation of any laws and no written notice of such violation has been received by Landlord and is not the subject of any existing, pending, or threatened investigation or inquiry by any governmental authority or subject to any remedial obligations under any laws pertaining to or relating to hazardous materials or other environmental conditions.

E. No lawsuit has been filed against Landlord regarding the Premises.

F. There are no other leases, agreements or contracts in existence relating to the Premises, including, without limitation, tenant leases, service contracts, or management agreements.

G. Landlord has received no notice from any insurance company with respect to the cancellation of any policy concerning the Premises or refusal of the insurance company to insure the Premises.

H. There are no oral agreements affecting the Premises.

I. There is no litigation pending with respect to the Premises relating to any Environmental Law violations. Except as disclosed in writing by Landlord or disclosed in environmental reports delivered to Tenant, Landlord has no actual knowledge of an Environmental Law violation and has received no notice or other written communication from a governmental agency or any other person or entity alleging or suggesting an Environmental Law violation on the Premises. The term "**Environmental Law**," as used in this Agreement, shall include: (1) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.A. §9601, et seq. ("**CERCLA**"); (2) Solid

Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C.A. §6901, et seq.; (3) Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C.A. §1251, et seq.; (4) Toxic Substances Control Act of 1976, as amended, 15 U.S.C.A. §2601, et seq.; (5) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §11001, et seq.; (6) Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C.A. §7401, et seq.; (7) National Environmental Policy Act of 1970, as amended, 42 U.S.C.A. §4321, et seq.; (8) Rivers and Harbors Act of 1899, as amended, 33 U.S.C.A. §401, et seq.; (9) Endangered Species Act of 1973, as amended, 16 U.S.C.A. §1531, et seq.; (10) Occupational Safety and Health Act of 1970, as amended, 29 U.S.C.A. §651, et seq.; (11) Safe Drinking Water Act of 1974, as amended, 42 U.S.C.A. §300(f), et seq.; and (12) all applicable standards, rules, policies and other governmental requirements.

J. Landlord owns the Premises free and clear of any mortgage or deed of trust or other encumbrance or lien and no third party has any right to possess or occupy the Premises. There are no unrecorded easements or rights-of-way affecting the Premises.

K. Landlord has not caused or permitted, and has no knowledge that any third party has caused or permitted, any "Hazardous Substances" (as hereinafter defined) to be placed, held, located or disposed of in, on or at the Premises or any part thereof except in accordance with all applicable laws, statutes, ordinances, and regulations.

L. Landlord hereby agrees to indemnify Tenant and hold Tenant harmless from and against any and all losses, liabilities, damages, injuries, expenses (including any costs required to Remediate, as hereinafter defined, the Premises incurred by Tenant), including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Tenant by any person or entity or governmental agency as a result of the escape, seepage, leakage, spillage, discharge, emission, discharging or release from, the Premises of any Hazardous Substance; provided, however, that the foregoing indemnity is limited to matters arising solely from Landlord's violation of the representation contained in Article 19.1.K.

M. There are no agreements, commitments or understandings by or between Landlord and any third party pursuant to which (i) Landlord agrees to make the Premises part of any special assessments, special district, or taxing district ("Assessments"), or (ii) Landlord or its successors in interest are required to sell, grant or dedicate any part of the Premises or to grant any easement, water rights, rights-of-way, road or license for ingress and egress or other use in respect to any part of the Premises, whether on account of the development of adjacent or nearby real property or otherwise. Landlord has no knowledge of any Assessments being contemplated.

N. Landlord has no knowledge of any fact, condition, or action, present, contemplated, or threatened, which would or may result in the termination or impairment of access to and from the Premises as such access presently exists, and Landlord is not in

violation of any easements, rights-of-way, conditions, covenants and restrictions, licenses, or other agreements burdening the Premises.

that: 2. Representations of Tenant. Tenant represents, warrants and covenants to Landlord

A. Tenant's Authority. Tenant is a duly constituted limited liability company organized under the laws of the State of Colorado, it has the power to enter into this Lease and perform Tenant's obligations hereunder; and the person executing this Lease on Tenant's behalf has the right and lawful authority to do so.

B. Tenant's Covenants as to Hazardous or Toxic Materials.

i. Tenant hereby covenants that Tenant shall not cause or permit any "Hazardous Substances" (as hereinafter defined) to be placed, held, located or disposed of in, on or at the Premises or any part thereof except in accordance with all applicable laws, statutes, ordinances, and regulations.

ii. Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person or entity or governmental agency as a result of the escape, seepage, leakage, spillage, discharge, emission, discharging or release from, the Premises of any Hazardous Substance, provided, however, that the foregoing indemnity is limited to matters arising solely from Tenant's violation of the covenant contained in Article 19.2.B.i.

iii. For purposes of this Lease, "**Hazardous Substances**" shall mean and include those elements or compounds which are contained in the list of hazardous substances now or hereafter adopted by the United States Environmental Protection Agency (the "EPA") or the list of toxic pollutants designated by Congress or the EPA or which are now or hereafter defined as hazardous, toxic, pollutants, infectious or radioactive by any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect. "Hazardous Substances," for the purposes of this Article 19, shall include petroleum products, asbestos, and polychlorinated biphenyls, and underground storage tanks unless installed, maintained, and closed in compliance with all applicable laws.

iv. In the event Hazardous Substances are present on the Premises in violation of Tenant's covenant in Article 19.2.B.i hereof, and Tenant fails to clean up, remove, resolve, minimize the impact of, or otherwise remediate such contamination in compliance with all applicable laws and regulations and to obtain a "no further action" or similar closure letter from the governmental authorities with jurisdiction over such Hazardous Substances permitting the development and use of the Premises as contemplated herein without further remediation (collectively, "Remediate," which term shall include obtaining such approvals

as are required from applicable governmental authorities prior to the commencement of Remediation activities on the Premises), then Landlord shall have the right, but not the obligation, thirty (30) days after notice to Tenant and Tenant's failure to Remediate, or, if Tenant cannot Remediate within thirty (30) days, then upon Tenant's failure to commence preparation of a plan to Remediate within such thirty (30) day period and diligently pursue the approval of such plan and the completion of the remediation work authorized by the approved plan to completion, to enter upon the Premises to Remediate such contamination. Notwithstanding the foregoing, in no event shall Tenant be afforded more than two (2) years after the approval of Tenant's remediation plan by the appropriate governmental agency or agencies, or any shorter time required for the completion of such remediation by the agencies in granting such approval, to complete such remediation. Tenant agrees to commence preparation of such plan promptly upon receipt of notice that such Hazardous Substances are present, to apply for approval of such plan promptly, and to pursue such approval diligently. All reasonable costs and expenses incurred by Landlord in the exercise of any such rights, which costs and expenses result from Tenant's violation of the covenants contained herein, shall be deemed Additional Rent under this Lease and shall be payable by Tenant upon demand.

Article 20

Option to Purchase

Landlord hereby grants to Tenant an option to purchase all, but only all and not a lesser portion, of the Premises (the "**Purchase Option**"), at the end of the Initial Term or at any time during the First Extension Option Period or any additional Extension Option period then in effect, and provided there is then no uncured Event of Default, subject to and in accordance with the following provisions:

1. **Notice of Exercise.** Tenant shall exercise the Purchase Option by giving written notice of exercise ("**Exercise Notice**") to Landlord. The Exercise Notice shall specify a date for the closing (the "**Closing**") of Tenant's purchase of the Premises (the "**Closing Date**"). The Closing Date shall be not less than one hundred twenty (120) days and not more than one hundred eighty (180) days after the date Tenant gives the Exercise Notice.

2. **Title Examination.** Within ten (10) days of giving the Exercise Notice, Tenant shall order and obtain a title insurance commitment (the "**Title Commitment**") from a mutually acceptable title insurance company (the "**Title Company**"), together with copies of all instruments (the "**Title Instruments**") reflected therein, including, but not limited to, any easements, restrictions, reservations, terms, covenants, or conditions which may be applicable to or enforceable against the Premises. The Title Commitment will show Landlord to be owner of fee simple title to the Premises and commit to insure title in Tenant under the standard owner's policy of title insurance of the Company (the "**Title Policy**") and for the Purchase Price (as defined in Article 20.3 below). Tenant shall have a reasonable period not to exceed ten (10) business days after Tenant's receipt of the Title Instruments (the "**Title Review Period**") to review the Title Instruments as follows:

A. If Tenant objects to title, on or before the expiration of the Title Review Period, it shall give Landlord Notice (a "**Title Objection Notice**"), in which event the Parties will proceed as set forth in Paragraph 4(c) below. If Tenant approves of the title

and gives notice (a "Title Approval Notice") to Landlord of such approval on or before the expiration of the Title Review Period, then the exceptions set forth in Schedule B-2 of the Title Commitment will be permitted exceptions ("Permitted Exceptions") to the Deed (as defined in Article 20.6.A) delivered at Closing (as defined and set forth in Article 20.4 below). In no event shall Tenant have the right to object to any matter relating to title which was created by Tenant.

B. If Tenant fails to give a Title Approval Notice or a Title Objection Notice on or before the expiration of the Title Review Period, Tenant shall be deemed to have given a Title Approval Notice.

C. If Tenant objects to title and gives a Title Objection Notice on or before the expiration of the Title Review Period, then Landlord will have ten business days (the "Landlord Response Period") in which to (i) propose a cure ("Proposed Title Cure") of the Title Objection or (ii) advise Tenant that it will not cure the Title Objection; provided, however, that any mortgage, deed of trust or other monetary lien or encumbrance placed by Landlord upon its fee simple interest in the Premises and in effect as of the Closing of the Purchase Option (each a "Landlord Mortgage") shall not constitute an objection to title for which Tenant shall be required to give a Title Objection Notice and in no case shall constitute a Permitted Exception, and Landlord agrees, at its expense, to cause each Landlord Mortgage to be released of record at the Closing of the Purchase Option. If Landlord fails to respond to the Title Objection within the Landlord Response Period, Landlord shall be deemed to have given a Notice advising that it will not cure the Title Objection.

D. If Landlord offers a Proposed Title Cure within the Landlord Response Period, Tenant will have ten (10) business days thereafter to give notice to Landlord that it (i) accepts the Proposed Title Cure, in which case the Parties will proceed as set forth herein with respect to the exercise of the Option and Closing or (ii) rejects the Proposed Title Cure, in which event the Parties will proceed as set forth in Article 20.2.E below.

E. If Landlord gives notice (or is deemed to have given notice) to Tenant that it will not cure a Title Objection, or if Tenant gives notice (or is deemed to have given notice) to Landlord that it rejects a Proposed Title Cure, as Tenant's sole remedy and by notice to Landlord before the expiration of the Option Period, Tenant (i) may elect to waive the Title Objection, in which event the Title Objection will be a Permitted Exception and the Parties will proceed as set forth herein with respect to the exercise of the Option and Closing or (ii) Tenant may cancel this Option and in the event of such cancellation, the Purchase Option shall be deemed terminated and this Lease shall remain and continue in full force and effect in all other respects. .

3. Purchase Price. The purchase price (hereinafter referred to as the Purchase Price) shall be the fair market value of the Premises, valued as vacant land only without assigning any value to any Improvements then constructed on or under the Premises, and as if the Premises were not encumbered by this Lease. If Landlord and Tenant are unable to agree upon the fair market value on or before twenty (20) days following the date Tenant gave its Exercise Notice, then the fair market value shall be determined by the following appraisal method: Landlord and Tenant shall attempt to agree upon one licensed MAI appraiser but if Landlord and Tenant are

unable to do so, Landlord and Tenant shall each select one licensed MAI appraiser by providing written notice of such selection to the other Party on or before thirty five (35) days following the date Tenant gave its Exercise Notice. The two licensed appraisers shall select a third appraiser within ten (10) days following the appointment of the last of the original two appraisers. The three appraisers shall then determine, by a vote of at least two of the three appraisers, the fair market value of the Premises, valued as vacant land only without assigning any value to any Improvements then constructed on or under the Premises, and as if the Premises were not encumbered by this Lease. The appraisers, or the majority of the appraisers, as the case may be, shall then submit an appraisal report to the Landlord and Tenant within thirty (30) days following the appointment of the third appraiser, and the market value as shown in such appraisal report shall be the Purchase Price. If either Landlord or Tenant fails to appoint an appraiser within the allotted time period, the appraiser appointed by the other Party shall be the sole appraiser. If only one appraiser is used, the fair market value shall be as determined by such appraiser's report. If a single appraiser is used, the parties shall share equally in the cost thereof. If three appraisers are used, Landlord and Tenant shall pay the cost of its own appraiser and share equally in the cost of the third appraiser.

4. Closing Costs. If the Purchase Option is exercised by Tenant in accordance with the terms hereof, then at the closing of the conveyance of the Premises (the "Closing"), (a) Landlord, as seller, shall be responsible for one-half (1/2) of all Other Closing Costs (as defined below); the cost of a standard owner's policy of title insurance; and one-half (1/2) of all escrow and title company fees and charges (other than the title policy charges specified above); and (b) Tenant, as buyer, shall be responsible for payment of the documentary fee due pursuant to C.R.S. § 39-13-102; all recording fees for the special warranty deed; all title insurance premiums other than those which Landlord is obligated to pay as described above, including the additional cost of ALTA extended coverage and/or any title endorsements as may be desired by Tenant; one-half (1/2) of all escrow and title company fees and charges (other than the title policy charges specified above); and one-half (1/2) of all Other Closing Costs. As used herein, "Other Closing Costs" shall mean document preparation charges by the title company, but shall not include any escrow or title company fees, real estate brokerage commissions, finder's fees, attorneys' fees or other such costs and expenses incurred separately by Tenant or Landlord.

5. Survey. Tenant may obtain a monumented land survey of the Premises, at Tenant's own cost and expense,

6. Closing.

A. At the Closing, Landlord shall execute (and acknowledge, as appropriate) and/or deliver to the Title Company the following items (the "Landlord Closing Deliveries"): (i) a special warranty deed (the "Deed") for the Premises subject only to real property taxes for the year of the Closing and the Permitted Exceptions, and (ii) such other documents as the Title Company may reasonably require in order to issue a title policy for the benefit of Tenant and consistent with the closing of a similar transaction.

B. At the Closing, Tenant shall execute (and acknowledge, as appropriate) and/or deliver to the Title Company the following items (the "Tenant Closing Deliveries"): (i) an amount equal to the amount due from purchaser as shown on the mutually approved settlement statement prepared by the Title Company in immediately

available federal funds by wire transfer to the Title Company, and (ii) such other documents as the Title Company may reasonably request consistent with the closing of a similar transaction.

7. Assignment of Purchase Option. Subject to the restriction provided in this paragraph, Tenant shall have the right to assign its rights under the Purchase Option contained in this Article 20 separately from its rights under the remainder of this Lease to any Shea Related Entity, without the consent of Landlord, and upon receiving written evidence of such assignment and of the assumption by such Shea Related Entity of the obligations of Tenant with respect to the Purchase Option, Landlord shall accept the exercise of the Purchase Option by such Shea Related Entity as an exercise by Tenant hereunder. In the event the Tenant at the time of the assignment of the Purchase Option is a Qualified Assignee, the Tenant shall also have the right, without the consent of Landlord, to assign its rights under the Purchase Option contained in this Article 20 separately from its rights under the remainder of this Lease to any entity that is controlled by the Tenant or in which the Tenant owns a twenty five percent (25%) or greater interest, and provided Landlord receives written evidence of (a) such control or ownership, and (b) such assignment and of the assumption by such assignee of the obligations of Tenant with respect to the Purchase Option, Landlord shall accept the exercise of the Purchase Option by such entity as an exercise by Tenant hereunder. Tenant shall only have a right to assign its rights under the Purchase Option separate from its rights under the remainder of this Lease, without the prior written consent of Landlord, if the assigning Tenant at the time of such assignment is a Shea Related Entity or a Qualified Assignee. Any other assignment of the rights under the Purchase Option contained in this Article 20 separately from the rights under the remainder of this Lease shall only be made and be effective upon Landlord's prior written consent, which consent shall be in Landlord's sole and absolute discretion.

[Signatures on following page]

IN WITNESS WHEREOF, this Lease has been executed as of the date written above.

LANDLORD:

**ENGLEWOOD/MCLELLAN RESERVOIR
FOUNDATION**

A Colorado non profit corporation

By: _____

Name

Title

TENANT:

**CENTRAL PARK AT HIGHLANDS RANCH,
LLC, a Colorado limited liability company**

By: Shea Properties Management Company, Inc.,
a _____, its Manager

By:  _____
Name: John Kilrow
Title: Assistant Secretary

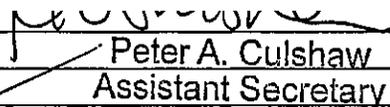
By:  _____
Name: Peter A. Culshaw
Title: Assistant Secretary

EXHIBIT A
DEPICTION OF PREMISES

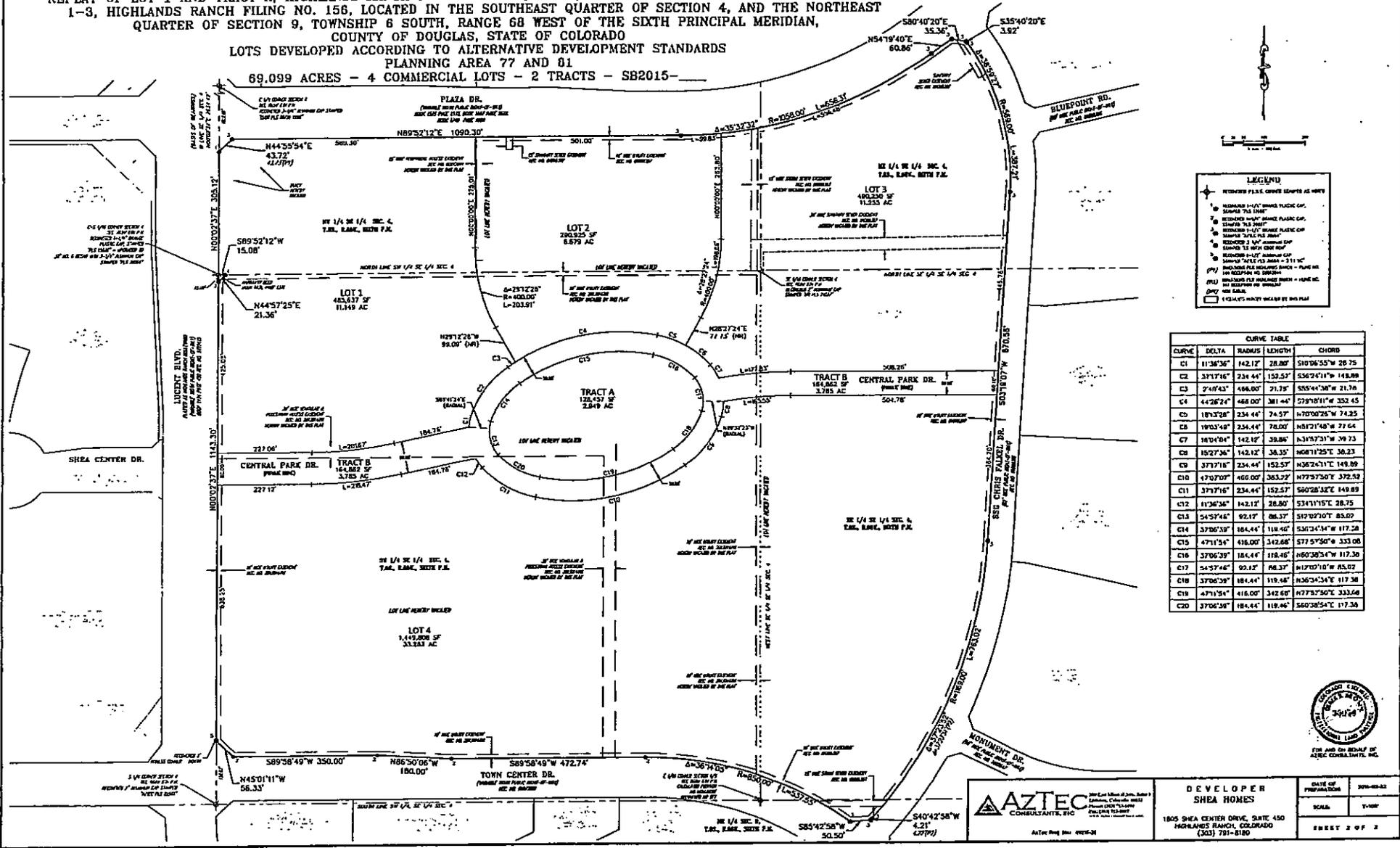
[PROPOSED LOT 4, HIGHLANDS RANCH FILING NO. 156, 1ST AMENDMENT]

HIGHLANDS RANCH - FILING NO. 156, 1ST AMENDMENT

REPLAT OF LOT 1 AND TRACT A, HIGHLANDS RANCH FILING NO. 144, LOT 1, HIGHLANDS RANCH FILING NO. 147, AND LOTS 1-3, HIGHLANDS RANCH FILING NO. 156, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 4, AND THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 6 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO

LOTS DEVELOPED ACCORDING TO ALTERNATIVE DEVELOPMENT STANDARDS
PLANNING AREA 77 AND 81

69.099 ACRES - 4 COMMERCIAL LOTS - 2 TRACTS - SB2015-



LEGEND

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CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	CHORD
C1	113°36'	142.12	28.807	510°26'55"W 28.75
C2	37°17'	734.44	152.537	536°24'11"W 148.88
C3	2°40'43"	468.00	21.738	325°44'38"W 21.76
C4	64°26'24"	468.00	381.447	579°18'11"W 332.45
C5	18°13'28"	234.44	74.577	1°70°00'25"W 74.25
C6	18°03'48"	234.44	78.002	385°21'48"W 77.64
C7	38°04'04"	142.12	38.886	315°37'31"W 39.73
C8	18°27'36"	142.12	36.357	308°11'28"W 36.23
C9	37°17'18"	234.44	152.537	308°24'11"W 148.88
C10	47°07'07"	468.00	363.227	377°37'50"W 372.53
C11	37°17'18"	234.44	152.537	580°28'32"E 149.89
C12	113°36'36"	142.12	28.807	534°11'15"E 28.75
C13	54°57'46"	92.17	66.37	519°27'10"E 85.07
C14	37°06'39"	184.44	118.407	530°24'34"W 117.58
C15	47°11'54"	418.00	342.688	577°57'50"W 333.08
C16	37°06'39"	184.44	118.407	380°30'54"W 117.58
C17	54°57'46"	92.17	66.37	319°27'10"W 85.07
C18	37°06'39"	184.44	118.407	308°24'34"W 117.58
C19	47°11'54"	418.00	342.688	377°57'50"W 333.08
C20	37°06'39"	184.44	118.407	580°28'32"E 149.89



AZTEC CONSULTANTS, INC.
200 East Main Street, Suite 1
Highlands Ranch, Colorado 80126
Tel: 303.781.1234
Fax: 303.781.1235
Aztec Reg. No. 00000000

DEVELOPER
SHEA HOMES
1805 SHEA CENTER DRIVE, SUITE 450
HIGHLANDS RANCH, COLORADO
(303) 781-8100

DATE OF PREPARATION: 09/18/2013
SCALE: 1"=40'
SHEET 2 OF 2

EXHIBIT B
MEMORANDUM OF LEASE

8355322_18

When recorded return to:
Shea Properties
6380 South Fiddlers Green Circle
Suite 400
Greenwood Village, CO 80111
Attention: Jeffrey H. Donelson, Esq.

MEMORANDUM OF GROUND LEASE

This MEMORANDUM OF GROUND LEASE (the "Memorandum") is made between ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION, a Colorado nonprofit corporation ("**Landlord**"), with an address at 1000 Englewood Parkway, Englewood, Colorado 80110, Attention: President, and CENTRAL PARK AT HIGHLANDS RANCH, LLC, a Colorado limited liability company ("**Tenant**"), with an address at 6380 South Fiddlers Green Circle, Suite 400, Greenwood Village, CO 80111, Attention: Peter A. Culshaw, effective as of the Effective Date defined below.

RECITALS

A. Landlord, as the owner of the real property legally described in Exhibit A attached hereto and made a part hereof (the "**Real Property**"), has entered into a Ground Lease with Tenant with an Effective Date of _____, 2016 (the "**Lease**"), covering the Real Property, together with all of Landlord's right, title and interest in and to certain Appurtenances and all improvements, if any, currently located on, appurtenant to, or used in connection with the Real Property (collectively, the "**Premises**").

B. Landlord and Tenant desire to give record notice of the Lease. Capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Lease.

AGREEMENT

In consideration of the Rent and the mutual promises and covenants set forth below, the parties agree as follows:

1. **Lease of Premises.** In consideration of the obligation of Tenant to pay the Rent as provided in the Lease, and in consideration of the other terms, provisions and covenants of the Lease, Landlord leases the Premises to Tenant, and Tenant accepts the Premises from Landlord.

2. **Term.** The initial term of the Lease (the "**Initial Term**") shall commence on _____, 201__ (the date that is six (6) months from the date of the Replat Approval) (the "**Commencement Date**"). Unless extended as provided below, the Initial Term shall expire at 11:59 p.m. on _____, 20__ (the last day of the last calendar month of the twentieth (20th) Lease Year). Tenant shall have an option to extend the Initial Term ("**First Extension Option**") for an additional ten (10) years. If the First Extension Option is exercised, Tenant shall have three

additional options to extend the Term for three additional consecutive terms, each consisting of ten (10) years, and one final additional option term of five (5) years (each, an "**Extension Term**"). The Initial Term and any Extension Terms are referred to herein as the "**Term**". Tenant shall have the right to exercise its Extension Options by providing Landlord written notice exercising its option to extend not less than one hundred eighty (180) days prior to the expiration of the then-current Term.

3. **Improvements.** Tenant is expressly permitted to construct improvements upon the Premises as set forth in the Lease (the "**Improvements**"). Upon termination of the Lease, the Improvements shall become the property of the Landlord.

4. **Assignment and Subletting.** Assignment of the Lease and subletting of the Premises is restricted as set forth in the Lease.

5. **Option to Purchase.** The Lease contains a Purchase Option granted to Tenant, pursuant to which Tenant has the option to purchase the Premises at the end of the Initial Term or at any time during the First Extension Option Period or any additional Extension Option period then in effect, provided there is then no uncured Event of Default. Tenant shall exercise the Purchase Option by giving written notice of exercise ("**Exercise Notice**") to Landlord. The Exercise Notice shall specify a date for the closing (the "**Closing**") of Tenant's purchase of the Premises (the "**Closing Date**"). The Closing Date shall be not less than one hundred twenty (120) days and not more than one hundred eighty (180) days after the date Tenant gives the Exercise Notice.

6. **Effect of Memorandum.** This Memorandum is intended to provide record notice of the Lease. In the event of any inconsistency between the provisions of the Lease and the provisions of this Memorandum, the provisions of the Lease shall control. All parties are further given notice of the terms and conditions set forth in the Lease in addition to those described above. Copies of the Lease are in the possession of the Landlord and Tenant. The terms and conditions of the Lease are by this reference incorporated herein and made a part hereof.

Executed as of the Effective Date set forth above.

LANDLORD:

**ENGLEWOOD/MCLELLAN RESERVOIR
FOUNDATION**, a Colorado non profit corporation

By: _____

Name

Title

TENANT:

**CENTRAL PARK AT HIGHLANDS RANCH,
LLC**, a Colorado limited liability company

By: Shea Properties Management Company, Inc., a
Delaware corporation, its Manager

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_ by _____, as _____ of ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires:

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201_ by _____, as _____ and _____, as _____ of Shea Properties Management Company, Inc., a Delaware corporation, the Manager of CENTRAL PARK AT HIGHLANDS RANCH, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires:

Notary Public

**EXHIBIT A
TO
MEMORANDUM OF LEASE**

Legal Description of the Property

Lot 4, Highlands Ranch Filing No. 156, 1st Amendment, County of Douglas, State of Colorado.

8551647_1

COUNCIL COMMUNICATION

Date: March 14, 2016	Agenda Item: 11ci	Subject: Contract for Transit Shuttle Services
Initiated By: Community Development Department		Staff Source: Harold J. Stitt, Senior Planner

PREVIOUS COUNCIL ACTION

Council approved an Intergovernmental Agreement (IGA) between the City and the Regional Transportation District (RTD) for funding of the Englewood Circulator Shuttle by Ordinance 50, Series of 2004, by Ordinance 66, Series of 2007, by Ordinance 10, Series of 2008, by Ordinance 8, Series of 2009, by Ordinance 4, Series of 2010, Ordinance 5, Series of 2011, by Ordinance 9, Series of 2012, by Ordinance 3, Series of 2013, by Ordinance 10, Series of 2014, and by Ordinance 5, Series of 2015. Council approved by Motion, in August 2004, a contract for transit services with Laidlaw Transit Services and subsequently extended this contract by Resolution No. 87, Series of 2005, by Resolution No. 77, Series of 2006, by Motion on December 3, 2007, by Motion on March 3, 2008, by Motion on April 6, 2009. Council approved by Motion on December 21, 2009, a contract for transit services with MV Transportation, Inc., and subsequently extended this contract by Motion on February 22, 2011, by Motion on March 5, 2012, by Motion on February 4, 2013, by Motion on March 17, 2014, and by Motion on February 2, 2015.

RECOMMENDED ACTION

Staff recommends Council approve, by motion, an agreement between the City of Englewood and MV Public Transportation, Inc. for 2016 management, operation, and maintenance of the art shuttle. The contract amount is \$266,834.00

BACKGROUND AND ANALYSIS

In 2009, after five years of art shuttle service, the Community Development Department issued a Request for Proposals (RFP) for management, operation, and maintenance of the shuttle. In 2010, the contract for art shuttle management, operation, and maintenance was awarded to MV Transportation. This contract included the option of four one-year extensions and the contract approved in 2014 was the fourth and final extension.

In October 2014, the City issued Request For Proposals 14-023 (RFP) to provide services for the art shuttle. Based on the cost comparison, City and RTD staff determined that MV Transportation was the preferred vendor of shuttle operations for 2015. In early November, 2014, MV Transportation was notified that their bid was the lowest acceptable bid and pending and were awarded the shuttle contract for 2015 and the option for four one-year extensions. This 2016 contract is the first of four extensions authorized in the approved 2015 contract.

FINANCIAL IMPACT

This contract is for the operation of art Shuttle services in the amount of \$266,834.00. RTD will reimburse the City the contract and fuel costs less the lost fare amount. The lost fair amount is equivalent to the fare capture rate times the percentage of riders that would not have had a RTD pass or a transfer from another RTD service, had the art Shuttle operated as a fare service charging the standard RTD full fare. The calculated lost fare amount for 2016 will be \$79,531. This lost fare amount is included in the approved 2016 Community Development Department budget. The contract continues the same level of service operating Monday through Friday, 6:30 am to 6:30 pm at no cost to riders.

ATTACHMENTS

Contract

Transit Shuttle Services Operations Contract

This Contract is made and entered into as of the _____ day of _____, 2016, by and between the City of Englewood, a Colorado Municipal Corporation (City), and MV Public Transportation Inc., a California Corporation whose address is 5910 North Central Expressway, Suite 1145, Dallas, TX 75206 (MV).

WHEREAS, The purpose of this contract is to implement various transportation services and improvements to reduce dependency on the single occupant automobile, facilitate movement of traffic to and within the commercial areas of the City of Englewood and to minimize traffic congestion in the shuttle area.

WHEREAS, The City desires to engage MV to provide said Transit Shuttle Management, Operations, and Maintenance services.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- Purpose:** The purpose of this Contract is to set forth all of the terms and conditions agreed upon between the Parties by which MV shall provide to the City: transit management, operations, and maintenance services, as provided herein. MV shall perform such services as set forth in this contract using that degree of care, skill, and knowledge employed by leading contractors in the field of transit management and operations in the United States.
- Scope of Services:** This Contract incorporates the requirements, conditions, obligations and promises of the City's "Notice Inviting Proposals For A Circulator Shuttle In The City Of Englewood, Colorado", dated October 13, 2014 and the "Proposal to Provide Management, Operation and Maintenance Services for the art shuttle in the City of Englewood, Colorado" by MV Public Transportation, Inc., dated October 31, 2014. **In the event of contradiction among the Contract documents, the terms and conditions of this Contract shall prevail.**
- Independent Contractor:** The City hereby contracts with MV to provide the shuttle services described herein within the City of Englewood as an independent contractor and not as an agent of the City.
- Quality of Service:** MV acknowledges that, through the provision of services, the City desires to provide to their citizens a high quality of service in the operation and maintenance of this shuttle system. MV agrees to supply the shuttle services described in paragraph two, above, in a safe, efficient, and professional manner.
- Compensation:** Compensation for 2016 shall be an amount not to exceed \$266,834.00 (\$43.43 per revenue service hour). In subsequent years MV will be compensated according to the following rate schedule:

January 1, 2017 – December 31, 2017	\$44.01 per revenue service hour
January 1, 2018 – December 31, 2018	\$45.51 per revenue service hour
January 1, 2019 – December 31, 2019	\$47.09 per revenue service hour

Note 1: The rates above do not include costs for Professional Liability Insurance as the parties have agreed to remove this requirement from this Contract.

Note 2: The rates above are based upon an estimated volume of 6,144 annual revenue hours (12 revenue hours each bus using 2 buses per day for 256 days per year) unless otherwise agreed upon.

Note 3: For purposes of this Contract, revenue service hours shall be calculated from arrival at the first shuttle pick-up location to the departure from the last shuttle drop-off location.

Note 4: Compensation is based upon Option 1 presented in MV Transportation, Inc.'s proposal on page 68, utilizing the existing (used) 2007 Chevrolet Starcraft XL 32' vehicles.

Note 5: Payment terms are net thirty (30) days from date of MV invoice.

6. **Term:** This Contract shall be for a term of twelve months commencing upon January 1, 2016 and ending at midnight, December 31, 2016.
7. **Applicable Law:** The parties agree this Contract shall be governed by and construed in accordance with the law of the State of Colorado. The venue for any litigation shall be Arapahoe County, Colorado.
8. **Termination:** In addition to any other rights provided herein, the City shall have the right, at any time and in its sole discretion, to terminate, not for cause, in whole or in part, this Contract and further performance of the services by delivery to MV of written Notice of Termination, of not fewer than ninety (90) days, specifying the extent and effective date of termination. Should the City terminate this Contract for default of MV, the City will provide MV written notice of the alleged default and ten (10) days to cure the alleged default. Any provision of this Agreement or its attachments which impose upon the City directly or indirectly, any financial obligation whatsoever to be performed or which may be performed in any fiscal year subsequent to the year of execution of this Agreement is expressly made and contingent upon and subject to funds for such financial obligation being appropriated, budgeted, and otherwise made available per Article X, Section XX of the Colorado Constitution (TABOR).
9. **Amendments:** All changes to this Contract shall be in writing and executed by the authorized officials of the Parties. In the event a change in this Contract is anticipated to cause an increase or decrease in the annual revenue service hours or in the Operating Expenses hereunder, MV and the City agree to negotiate an increase or decrease in the contracted amount of compensation. In the event any Federal, State, or local law, rule, regulation or ordinance becomes operative during the term of this Contract that has the effect of increasing MV's operating costs, to include, but not limited to, laws, rule, regulations, or ordinances pertaining to environmental protection or climate change, such as carbon credits, or new taxes imposed based on energy consumption; changes in the Americans With Disabilities Act; or government mandated increases to employee wages and/or benefits, to include health care benefits, City and MV shall meet to discuss the

impact of these unanticipated additional costs and negotiate an equitable adjustment to MV's rates. In the event City and MV are unable to agree on the amount of the equitable rate adjustment, MV may terminate this contract for convenience.

10. **Assignment:** MV shall not assign its performance of this contract without the prior written consent of the City, which consent shall not be unreasonably withheld. Any attempt by the contractor to assign any performance of this contract without such consent shall be null and void.
11. **Subject to Annual Appropriation:** Any provision of this agreement or its attachments which impose upon the City, directly or indirectly, any financial obligation whatsoever to be performed or which may be performed in any fiscal year subsequent to the year of execution of this agreement is expressly made contingent upon and subject to funds for such financial obligation be appropriated, budgeted and otherwise made available.
12. **Verification of Compliance with C.R.S. 8-17.5-101 ET.SEQ. Regarding Hiring of Illegal Aliens:**
 - (a) **Employees, Consultants and Sub-consultants:** Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Consultant shall not contract with a sub-consultant that fails to certify to the Consultant that the sub-consultant will not knowingly employ or contract with an illegal alien to perform work under this Contract. [CRS 8-17.5-102(2)(a)(I) & (II).]
 - (b) **Verification:** Consultant will participate in either the E-Verify program or the Department program, as defined in C.R.S. 8-17.5-101 (3.3) and 8-17.5-101 (3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services. Consultant is prohibited from using the E-Verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.
 - (c) **Duty to Terminate a Subcontract:** If Consultant obtains actual knowledge that a sub-consultant performing work under this Contract knowingly employs or contracts with an illegal alien, the Consultant shall;
 - (1) notify the sub-consultant and the City within three days that the Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and
 - (2) terminate the subcontract with the sub-consultant if, within three days of receiving notice required pursuant to this paragraph the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.

(d) **Duty to Comply with State Investigation:** Consultant shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation by that the Department is undertaking pursuant to C.R.S. 8-17.5-102 (5)

(e) **Damages for Breach of Contract:** The City may terminate this contract for a breach of contract, in whole or in part, due to Consultant's breach of any section of this paragraph or provisions required pursuant to CRS 8-17.5-102. Consultant shall be liable for actual and consequential damages to the City in addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract under this Paragraph 12.

13. **Drug and Alcohol Testing Program:** The City shall require its contractor providing the Services to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 40 and Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Colorado, or the Regional Transportation District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 40 and 655 and review the testing process. The Local Entity further agrees to certify annually its compliance with Part 40 and 655 before December 31st of every year and to submit the Management Information System (MIS) reports no later than February 15th of every year to the Substance Abuse Testing Department, Regional Transportation District, 1600 Blake Street, Denver, CO 80202. To certify compliance, the Local Entity will use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
14. **Notice:** All notices required herein shall be deemed effective on the date of receipt, with such notice in writing and sent to the other party via certified mail, return receipt requested, or via a commercial delivery service the signed delivery receipt obtained. Such notices shall be addressed as follows: To MV: General Counsel, MV Public Transportation, Inc., 5910 North Central Expressway, Suite 1145, Dallas, Texas 75206. To City of Englewood: Harold J. Stitt, Community Development Department, City of Englewood, 1000 Englewood Parkway, Englewood, CO 80110-2373.
15. **Rate Changes:** The City and MV shall negotiate higher or lower rates as specified in Section 5 of this Contract for MV's increased or decreased costs in the event any of the following event(s) occur during the term of this Contract or any extension thereof. MV shall provide written notice to the City in the event of one or more of these events occurs, and the City shall amend MV's rates from the first day of MV's increased or decreased costs: (i) in the event the amount of annual revenue increases or decreases more than 10% from the level's specified in the at Section 5; (ii) in the event a local, state or federal government with jurisdiction over MV's employees orders an increase in the mandated minimum wages, payroll taxes or fringe benefits applicable to employees of MV that was unknown to MV when it submitted its Proposal to the City; and (iii) in the event a local, state or federal government entity with jurisdiction over MV adopts a law, rule, regulation or order subsequent to the date when MV submitted its Proposal to the City, which law, rule, regulation or order has the effect of increasing MV's costs hereunder.

16. **Force Majeure:** MV shall be excused from performing its obligations herein during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to, any incidence of fire, flood, strike, acts of God, acts of the Government (federal, state or local), war or civil disorder, violence or the threat thereof, severe weather, unusual traffic conditions, commandeering of material, products, plants or facilities by the Government, fuel or material shortages or for any other event reasonably beyond the control of MV.
17. **Waiver:** Failure of either party to assert any right, which it has under this Agreement, or to assess penalties as provided, shall not act as a waiver as to that party's right to enforce the provisions of said Agreement, or assess penalties in the future.
18. **Intellectual Property:** The City acknowledges that the MV provided computer software and business processes (hereinafter "Intellectual Property") are the intellectual property of MV, and neither the City nor any successor contractor shall acquire any ownership interest in the Intellectual Property under this Agreement. All right, title and interest, including copyright interests and any other intellectual property, in and to the Intellectual Property, object code, source code, interfaces or similar computer code and written materials produced or provided or used by MV during its performance of the services hereunder, including all enhancements, modifications and derivative works under this Agreement (collectively, the "Intellectual Property") shall be the property of MV. The City acknowledges that a license (the "License") to the City to utilize any Intellectual Property provided by MV is limited in time and scope, is non-exclusive and non-transferable, and the City may not (i) sublicense, assign, transfer, rent or lease the Intellectual Property; (ii) copy, distribute or otherwise provide the Intellectual Property or use thereof to any third party without the express written consent of MV (which consent may be withheld in MV's sole discretion), or (iii) modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of the Intellectual Property. The Intellectual Property License may be used only for the internal business purposes of the City and only during the Term of this Agreement. The City's License and any right to use the Intellectual Property or any trademark, service mark or copyrighted MV material ceases immediately upon termination or expiration of this Agreement, and upon such event, the City shall return to MV or destroy any MV Intellectual Property (including manuals or other written materials relative to the Intellectual Property).
19. **Complete Agreement:** This Agreement contains the entire understanding between the parties. Any prior Agreement, whether oral or written, shall be invalid upon execution of this Agreement.

COUNCIL COMMUNICATION

Date	Agenda Item	Subject
March 14, 2016	11cii	Resolution of support to the Englewood McLellan Reservoir Foundation for enter into a ground lease with MKS Residential, d.b.a. Solana Lucent Station, LLC.
INITIATED BY Englewood McLellan Reservoir Foundation		STAFF SOURCE Michael Flaherty, EMRF Board of Directors

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

In 1999, City Council authorized the creation of the Englewood McLellan Reservoir Foundation (EMRF) for the purpose of facilitating the development of property adjacent to the City's McLellan Reservoir. On January 7, 2013 and again during a Council Study Session on February 4, 2013, the EMRF Board of Directors of EMRF presented a Letter of Intent (LOI) from MKS Residential, d.b.a. Solana Lucent Station, LLC, for a lease of property in Highlands Ranch Planning Area 85 (PA85.) Since that time, EMRF and MKS have negotiated a lease, based on the terms of the LOI and MKS has secured its entitlements from Douglas County. At the City Council Study Session on February 22, 2016, the Board of Directors of the Englewood McLellan Reservoir Foundation (EMRF) presented the terms of the lease agreement to Council.

RECOMMENDED ACTION

EMRF recommends City Council approve a resolution supporting the EMRF to enter into a ground lease with MKS Residential, d.b.a. Solana Lucent Station, LLC, for lease of the 9.89 acres in Lot 4 in PA 85 owned by EMRF.

BACKGROUND

In 1999, through Ordinance 41, City Council authorized the transfer of certain parcels of property in Douglas County near McLellan Reservoir to EMRF for the purpose of facilitating the development of those properties. Since that time, EMRF has managed and maintained the property, has made improvements, including over-lot grading and storm water management, and has platted most of the individual parcels, including the subject parcel. The basic terms of the lease with MKS are as follows:

1. The lease acknowledges the payment of a deposit of \$200,000.
2. The term of the lease is twenty (20) years with two (2) extension options of twenty (20) years each, and one final option of fifteen (15) years. (A maximum total lease term of 75 years.)
3. A Construction Rent Period beginning on the Commencement Date and shall be at ½ the Base Rent, or \$13,737/month. Construction Rent will terminate

the earlier of 18 months or the issuance of Certificate of Occupancy.

Construction Rent shall be drawn from a \$200,000 deposit that was required by the Letter of Intent.

4. Base Rent shall be \$329,702 annually, to commence on the issuance of a final Certificate of Occupancy or eighteen (18) months from the Commencement Date. Base Rent is based on a land value of \$9.00 per land square foot with an 8.5% annual yield to EMRF.
5. Base Rent shall be increased at year five (5) and every five (5) years thereafter during the Initial Term and during any Extension Term, the rent shall be increased by ten percent (10%).
6. In the event that the Tenant exercises an Extension Option, the Base Rent shall be adjusted, equal to any increase in the Consumer Price Index.
7. The Construction Period Rent will be ½ the Annual Rent for each phase.
8. At year five and every five (5) years thereafter during the Initial Term, the Annual Rent then in effect for the Phase 1 and Phase 2 Improvements shall be increased by ten percent (10%).
9. At the first renewal option, the Base Rent shall be adjusted, equal to any increase in the Consumer Price Index, above the five year adjustments.

FINANCIAL IMPACT

Based on the terms of the lease the gross payments to EMRF over the initial 20 year term is \$7.8 million, an annual average of \$390,678.

LIST OF ATTACHMENTS

City Council Resolution
Lease agreement

RESOLUTION NO. _____
SERIES OF 2016

A RESOLUTION SUPPORTING THE ENGLEWOOD MCLELLAN RESERVOIR FOUNDATION LEASE OF LOT 4 IN HIGHLANDS RANCH PLANNING AREA 85 (PA 85) WITH SOLANA LUCENT STATION LLC. CONSISTING OF 9.89 ACRES.

WHEREAS, the Englewood McLellan Reservoir Foundation was formed to oversee the development of the McLellan Reservoir property; and

WHEREAS, the Lease is for approximately 9.89 acres of the Englewood McLellan Reservoir Foundation property; and

WHEREAS, the City will realize \$390,678 on average per year for the lease of this property over twenty years for a total amount of \$7.8 million dollars; and

WHEREAS, the Englewood City Council discussed the terms of the proposed Lease terms at the January 7, 2013 Executive Session, and the Study Session of February 4, 2013; and

WHEREAS, the Englewood McLellan Reservoir Board (EMRF) Board of Directors seeks a Resolution of Support from the Englewood City Council for a Lease with Solana Lucent Station LLC.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado, hereby supports the Lease between the Englewood McClellan Reservoir Foundation and Solana Lucent Station LLC. for the lease of a portion of the McLellan Property, attached hereto as Exhibit A.

ADOPTED AND APPROVED this 14th day of March, 2016.

Joe Jefferson, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2016.

Loucrishia A. Ellis, City Clerk

GROUND LEASE

between

**ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION,
a Colorado non-profit corporation,**

as Landlord

and

**SOLANA LUCENT STATION LLC,
a Delaware limited liability company,**

as Tenant

Dated effective as of January 1, 2016

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EXHIBITS

EXHIBIT A: LEGAL DESCRIPTION OF PREMISES

EXHIBIT B: SITE PLAN OF PREMISES

EXHIBIT C: MEMORANDUM OF LEASE

EXHIBIT D: PLAZA CIRCLE PHASE 1

EXHIBIT E: SUBDIVISION IMPROVEMENT AGREEMENT

EXHIBIT E-1: SUBDIVISION IMPROVEMENT AGREEMENT ASSIGNMENT

GROUND LEASE

This **GROUND LEASE** (the "**Lease**") is made effective as of the 1st day of January, 2016, by and between **ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION**, a Colorado nonprofit corporation ("**Landlord**"), and **SOLANA LUCENT STATION LLC**, a Delaware limited liability company ("**Tenant**"). The date this Lease is executed and delivered by both parties hereto shall be referred to hereinafter as the "**Effective Date**."

WITNESSETH:

For and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to the terms and conditions as hereinafter provided:

1 Fundamental Lease Terms.

For convenience, this Section 1 summarizes certain fundamental economic and business terms of this Lease.

Effective Date: January 1, 2016.

Premises: That certain unimproved real property located in the County of Douglas, State of Colorado, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference, consisting of approximately 430,808 square feet.

The location of the Premises are shown on the Site Plan attached to this Lease as **Exhibit B**

Landlord ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION
1000 Englewood Parkway
Englewood, Colorado 80110
Attention: President

Tenant SOLANA LUCENT STATION LLC
c/o ReyLenn Properties LLC
444 S. Cedros, Suite 180
Solana Beach, CA 92075
Attention: Ric Shwisberg, COO

With a copy to:

ReyLenn Properties LLC
444 S. Cedros, Suite 180
Solana Beach, CA 92075
Attention: Christy Dutchman, CFO

Term or Initial

Term: Twenty (20) years from the Commencement Date

Extension

Options/Extension Term: Two (2) options to extend the Term for a period of twenty (20) years each and one (1) final option to extend the Term for a period of fifteen (15) years (each such option being an "Extension Option" and each such extension period being an "Extension Term").

Rent:

Construction Rent: Annual rent in the amount of \$164,851 payable in equal monthly installments in the amount of \$13,737.58 commencing as provided in Section 5.1.1.

Base Rent: Annual rent in the amount of \$329,702 payable in equal monthly installments in the amount of \$27,475.17 commencing as provided in Section 5.1.2. The Base Rent is subject to adjustment as follows:

On the fifth (5th) anniversary of the Commencement Date and every five (5) years thereafter during the Initial Term (each such date being an "Initial Term Base Rent Adjustment Date") the Base Rent then in effect shall be increased by ten percent (10%).

If the Term is extended for the First Extension Term of twenty (20) years, then at the commencement of the First Extension Term, the Base Rent then in effect shall be subject to adjustment to account for any increase in the "CPI Index" in the manner set forth in Section 5.3.3. Thereafter, on the fifth (5th) anniversary of the commencement date of the First Extension Term, and every five (5) years thereafter during the First Extension Term, the Base Rent then in effect shall be increased by ten percent (10%).

If the Term is extended for the Second Extension Term of twenty (20) years, then at the commencement of the Second Extension Term, the Base Rent shall be subject to further adjustment to account for any increase in the "CPI Index" in the manner set forth in Section 5.3.5. On the fifth (5th) anniversary of the commencement date of the Second Extension Term and every five (5) years thereafter during the Second Extension Term, the Base Rent then in effect shall be increased by ten percent (10%).

If the Term is further extended for the Third (and final) Extension Term of fifteen (15) years, then at the commencement of the Third Extension Term and each five (5) years thereafter the Base Rent then in effect shall be increased by ten percent (10%).

This is a Net Lease.

Deposit

The Deposit in the amount \$200,000 (receipt of which is acknowledged by Landlord) shall be held, disbursed and applied as provided in Section 5.6 below.

Each of the Fundamental Lease Terms set forth above is a summary of the terms elsewhere in this Lease which relate to each such Fundamental Lease Term. If there is any conflict between any Fundamental Lease Term and any specific clause of the Lease, the more specific clause shall control.

2 **Definitions.** For purposes of this Lease, the following terms shall have the following meanings:

- 2.1 **“Base Rent”** shall have the meaning set forth in Section 5.1.2
- 2.2 **“Buildings”** means the buildings which may be constructed by the Tenant on the Premises.
- 2.3 **“Casualty”** shall have the meaning set forth in Section 11.1.
- 2.4 **“Commencement Date”** shall have the meaning set forth in Section 4.1.
- 2.5 **“Construction Rent”** means the monthly amount of \$13,737.58 as provided in Section 5.1.1
- 2.6 **“Default”** or **“Event of Default”** shall have the meaning set forth in Section 13.1.
- 2.7 **“Default Rate”** means interest accruing at the rate equal to the Prime Rate plus five percent (5%), which rate shall be adjusted with each change in the Prime Rate. However, in no event shall the Default Rate be less than ten percent (10%) per annum. For purposes of this Lease, “Prime Rate” shall mean the prime rate as published in the *Wall Street Journal*. If the prime rate published by the *Wall Street Journal* becomes unavailable, Landlord shall use the prime rate as announce or published by such other organization or publication as reasonably determined by Landlord to be comparable to the prime rate now published in the Wall Street Journal.
- 2.8 **“Deposit”** shall have the meaning set forth in Section 5.6.
- 2.9 **“Effective Date”** means January 1, 2016.

- 2.10 **“Environmental Law”** shall have the meaning set forth in Section 20.1.8
- 2.11 **“Excusable Delay”** shall mean any of the following events that prevents, delays, retards or hinders a party's performance of its duties hereunder: act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes and lockout.
- 2.12 **“Extension Option”** shall have the meaning set forth in Section 4.2.
- 2.13 **“Extension Term”** shall have the meaning set forth in Section 4.2.
- 2.14 **“First Extension Term”** means the twenty year (20) period commencing on the first day of 21st Lease Year, and ending 11:59 PM on the last day of the 40th Lease Year.
- 2.15 **“Improvements”** means and includes without limitation, all Buildings, paving, curbs, gutters, sidewalks, fences and other physical structures now or hereafter constructed on the Premises of every kind and nature whatsoever, including without limitation all landscaping and planting and fixtures. The Improvements are to be constructed on the Premises by or at the direction of Tenant as more particularly described in Section 3.6. **“Improvements”** shall also include (i) all grading, paving and hook-up to utilities (both wet and dry); and (ii) all on-site and off-site improvements which may be required by any governmental agency as a condition to the development of the Premises by Tenant.
- 2.16 **“Initial Term”** means the first twenty (20) Lease Years as more specifically described in Section 4.1
- 2.17 **“Institutional Lender”** means a national or state bank, federal or state savings and loan association, mortgage company, insurance company, real estate investment trust, pension trust or fund, or other similar entity or financial institution regularly engaged in the business of making loans secured by deeds of trust or mortgages on commercial or residential real property.
- 2.18 **“Landlord”** means Englewood/McLellan Reservoir Foundation, its successors and assigns.
- 2.19 **“Leasehold Mortgage”** shall have the meaning set forth in Section 19.1
- 2.20 **“Leasehold Mortgagee”** shall have the meaning set forth in Section 19.1
- 2.21 **“Lease Year”** means each period of twelve (12) consecutive full calendar months beginning on the first day of the first calendar month next following the Commencement Date (or beginning on the Commencement Date, if the Commencement Date falls on the first day of a month); provided, however, that the first Lease Year shall also include any partial month from the Commencement Date

- through the last day of the month in which the Commencement Date falls and the last Lease Year shall end on the date the Term expires or terminates.
- 2.22 “**Memorandum of Lease**” means the Memorandum of Lease in the form attached to this Lease as Exhibit C and incorporated herein by this reference
- 2.23 “**Monetary Default**” shall have the meaning set forth in Section 13.1.1
- 2.24 “**Non-Monetary Default**” shall have the meaning set forth in Section 13.1.1
- 2.25 “**Pre-Development Rent**” shall have the meaning set forth in Section 5.6
- 2.26 “**Premises**” shall have the meaning set forth in Section 3.1. The Premises include, without limitation, all of Landlord’s rights, privileges and easements appurtenant to the real property, including, without limitation, all development rights, air rights, water rights, wastewater, storm drainage and other utility rights, credits and capacities, permits, agreements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Premises.
- 2.27 “**Real Estate Taxes**” means all taxes, however named, assessed, levied, or collected, whether on an ad valorem basis or other taxing method on the Premises, Improvements, Buildings, and assessments for land, betterments, and improvements that are levied or assessed on the Premises or the Improvements by any lawful authority, as finally determined in accordance with law, net of any applicable abatements, refunds, or rebates.
- 2.28 “**Real Property**” means the land described in Section 3.1.
- 2.29 “**Rent**” means and includes the Construction Rent, Base Rent and all other amounts Tenant is required to pay under this Lease.
- 2.30 “**Second Extension Term**” means the twenty year (20) period commencing on the first day of 41st Lease Year, and ending 11:59 PM on the last day of the 60th Lease Year.
- 2.31 “**Site Plan**” means the Site Plan attached to this Lease as Exhibit B.
- 2.32 “**Tenant**” means Solana Lucent Station LLC, a Delaware limited liability company and its permitted successors or assigns.
- 2.33 “**Third Extension Term**” means the fifteen year (15) period commencing on the first day of 61st Lease Year, and ending 11:59 PM on the last day of the 75th Lease Year.
- 2.34 “**Title Commitment**” shall have the meaning set forth in Section 4.4
- 2.35 “**Title Company**” means Fidelity National Title Insurance Company, or such other title company mutually agreed upon by Landlord and Tenant.

3 Lease of Premises.

- 3.1 Lease of Premises. For the Term, uses, rent, and in consideration of the covenants and agreements contained herein, and for other valuable consideration, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the following terms, stipulations, provisions, and conditions, that certain unimproved real property consisting of approximately 430,808 square feet (9.89 acres) of land described in Exhibit A attached hereto and incorporated herein by this reference ("Premises"). The location of the Premises is shown on the Site Plan.
- 3.2 Title. Landlord hereby represents and warrants to Tenant that it has good, marketable and insurable title to the Premises, free and clear of any mortgages, pledges, liens, and other encumbrances, subject only to the exceptions to title shown in the Title Commitment which have been approved by Tenant.
- 3.3 Condition of Premises; Tenant Release. Except as otherwise expressly provided herein, the Premises are being leased in their as-is condition. Except for Landlord's representations and warranties expressly set forth in this Lease, Tenant hereby waives, releases, acquits and forever discharges Landlord and its officers, directors, shareholders, employees, agents, successors and assigns, of and from any and all suits, causes of action, claims, demands, damages (actual and punitive), losses, costs, liabilities, and expenses, including attorneys' fees, of any kind or nature, in law or in equity, known or unknown, which Tenant shall or may have or acquire or possess in any way directly or indirectly connected with, based upon, or arising out of (i) Landlord's use, maintenance, leasing, ownership, operation, and demolition of improvements upon the Premises prior to the Effective Date of this Lease; or (ii) the condition (including environmental condition and structural fitness), status, quality, or nature of the Premises. Except as otherwise expressly provided herein, it is the intention of this Lease that any and all responsibilities and obligations of Landlord, and any and all rights or claims of Tenant against Landlord its successors and assigns and affiliates arising by virtue of the physical condition of the Premises, are by this release declared null and void and of no present or future effect as to such parties.
- 3.4 Premises Improvements. Tenant, at its sole cost and expense, with its own forces or those of its contractors and subcontractors, may construct Improvements on the Premises. All of the Improvements shall comply in all material respects with all applicable governmental requirements. As of the Effective Date it is contemplated by Tenant that the Premises will be improved with a multi-family residential development consisting of approximately 285 market rate apartments and appurtenant facilities in accordance with plans and specifications approved by the applicable governmental authorities.
- 3.5 Plaza Circle Improvements. Landlord and Tenant acknowledge that development of the Real Property will require the phased construction of a loop road ("Plaza Circle") adjacent to the Real Property and an adjacent parcel of land owned by the Regional Transportation District ("RTD"). The location of the Plaza

Circle is shown on the Site Plan. As a condition of this Lease, Tenant assumes the obligations of Landlord regarding construction of the first phase of the Plaza Circle, and Tenant shall be entitled to receive all reimbursements and/or credits due Landlord by RTD in connection with the construction of the first phase of the Plaza Circle. Without limitation of the foregoing, Landlord acknowledges and agrees that Landlord shall be required to reimburse Tenant on a monthly basis for fifty percent (50%) of all costs incurred by Tenant in connection with the construction of the first Phase of Plaza Circle as contemplated herein, including without limitation, all costs for permits, labor and materials and bonding (if required). Such reimbursements shall be made by Landlord to Tenant on a monthly basis and such reimbursements shall be due and payable no later than thirty (30) days after Tenant's deliver to Landlord of an invoice/draw request and supporting back-up documentation, including appropriate lien releases from Tenant's contractor and subcontractors. A diagram showing the improvements that comprise the first phase of the Plaza Circle is attached to this Lease as **Exhibit D**.

3.6 Entitlements/Easements.

- 3.6.1 Entitlements. Except for those items subject to reimbursement by Landlord related to Plaza Circle as provided in Section 3.5 above, Tenant shall be responsible, at its sole cost and expense for obtaining all permits, approvals and related entitlements (collectively "**Entitlements**") required from applicable governmental authorities for the construction of the Improvements on the Premises. Landlord shall cooperate with Tenant in securing the Entitlements, including without limitation, any parcel or subdivision map which may be required by Tenant in connection with the separate phasing and financing of the Improvements as contemplated by this Lease. If Landlord has not done so prior to the Effective Date, Landlord agrees to execute all documents necessary for Tenant to process and obtain the Entitlements, including the signing of applications reasonably requested by Tenant as may be required in connection with the Entitlements; provided, however, Except for those items subject to reimbursement by Landlord related to Plaza Circle as provided in Section 3.5 above, all documents to be signed by Landlord shall be at no cost to Landlord and without any other liability or obligation of Landlord.
- 3.6.2 Easements. Landlord and Tenant agree, upon the reasonable request of either party to this Lease, the applicable governmental agency, quasi-governmental agency (i.e., RTD) or a public utility, to execute documents which are reasonably required to create utility easements, temporary construction easements, or other easements required to construct and operate the Improvements, maintain and service the Improvements or any other improvements to be developed on the adjoining lands owned by Landlord, provided such easements do not unreasonably interfere with either party's use of their property. Such easements include, without limitation, those certain easements described on any subdivision map or plat which may be required by Tenant in connection with the separate phasing and financing of the Improvements as contemplated by this Lease.

Each party will undertake to obtain the consent of its mortgagee, if any, to any easements required under this Section 3.6.2.

3.7 Subdivision Processing.

3.7.1 Subdivision Map and Subdivision Improvement Agreement. Landlord acknowledges that the Premises are a portion of a larger tract of land owned in fee by Landlord, and as a part of the processing of the Entitlements, Tenant processed and on November 19, 2015, recorded a minor development final plat ("Map") causing the Premises to become a separate legal parcel as contemplated by this Lease. As the fee owner of the land (including the Premises) the Map was approved by Landlord as contemplated in Section 3.6.1 above. Concurrently with, and as a condition to the approval and recording of the Map, the County of Douglas, Colorado ("County") required that the fee owner of the land as "Developer" enter into a subdivision improvement agreement ("Subdivision Improvement Agreement") with the County which generally provides for the completion of certain public improvements within the proposed subdivision. A copy of the approved Subdivision Improvement Agreement is attached to this Lease as Exhibit E. The Subdivision Improvement Agreement provides in pertinent part that the Developer may assign its rights and obligations under the Subdivision Agreement to a party who is a successor or assignee of the Developer without the consent of the County. In consideration of Landlord's execution of the Subdivision Improvement Agreement prior to the Effective Date, concurrently with the execution of this Lease, Landlord shall assign all of its rights and obligations as Developer pursuant to Subdivision Improvement Agreement to Tenant and Tenant shall accept such assignment and assume such obligations of Developer on the terms and conditions more particularly set forth in the Assignment and Assumption of Subdivision Improvement Agreement attached to this Lease as Exhibit E-1.

3.8 Possession. Except for this Lease, Landlord shall deliver possession of the Premises free of all tenancies and rights of possession.

4 Lease Term; Pre Commencement Right of Entry; Title Insurance

4.1 Effective Date; Initial Term; Commencement Date. This Lease shall become legally binding on the Effective Date. The Initial Term shall commence effective as of January 1, 2016. Unless Tenant has exercised an Extension Option as provided below, the Initial Term shall expire at 11:59 p.m. on December 31, 2036. No later than ninety (90) days after the Commencement Date, Landlord shall deliver a written notice and Amendment to the Memorandum of Lease to Tenant to confirm the (a) Commencement Date and (b) the resulting expiration date of the Initial Term. Tenant shall confirm the information set forth in the notice by execution and delivery of the notice and Amendment to Landlord no later than ten (10) business days after submission thereof to Tenant. The failure of Tenant to timely execute and deliver the notice to Landlord shall be deemed Tenant's confirmation that the information set forth in Landlord's notice is true and correct for all purposes, in which case Landlord shall have the right to record an Amendment to the Memorandum of Lease consistent with such confirmation.

4.2 Extension Option.

4.2.1 Extension of Term. Landlord hereby grants to Tenant the option to extend the Term of this Lease for two (2) additional periods of twenty (20) years each and one (1) final option for a period of fifteen (15) years (each such option being an "Extension Option", and each such 20 or 15-year period, as applicable, being an "Extension Term"). Tenant shall exercise each Extension Option by written notice ("Option Notice") delivered by Tenant to Landlord no later than one hundred eighty (180) days prior to (x) the date of expiration of the Initial Term, in the case of the First Extension Option; and (y) the date of expiration of then applicable Extension Term, in the case of each subsequent Extension Option. If the Term is extended by the then applicable Extension Term as provided herein, all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that (A) there shall be no further extension of the Term following the expiration of the Third Extension Term; and (B) the Base Rent to be paid by Tenant for the then applicable Extension Term shall be subject to adjustment as set forth below. All references in this Lease to "Term" or "Lease Term" shall be considered to mean the Term as extended, and all references in this Lease to termination or to the end of the Term shall be considered to mean the termination or end of the then applicable Extension Term. As a condition of Tenant's right to exercise one or more Extension Options, including the right set forth in Section 4.2.3, there shall be no continuing and uncured Event of Default beyond any applicable notice and cure period at either the time of Tenant's exercise of such Extension Option or at the time of Commencement of the Extension Term. If Tenant elects to terminate this Lease pursuant to Section 4.2.2 below, any unexercised Extension Options for Extension Terms shall, subject to the rights of any

Leasehold Mortgagee, be deemed terminated upon such termination of the Lease.

4.2.2 Tenant Termination/Rights of Leasehold Mortgagee. Tenant may terminate the Lease at the end of the Initial Term, or at the end of any Extension Term, by written notice given to Landlord ("**Termination Notice**") at least one hundred eighty (180) days prior to the expiration of the then current Term. The Termination Notice shall include the name and address of any Leasehold Mortgagee and the name and telephone number of a representative of such Leasehold Mortgagee. If Tenant elects to terminate this Lease as provided in the preceding sentence, Landlord shall, no later than thirty (30) days following receipt of any Termination Notice, provide written notice of such election to any Leasehold Mortgagee at the address included in the Termination Notice and such election shall be suspended for a period of sixty (60) days after receipt of such notice by each such Leasehold Mortgagee. Any Leasehold Mortgagee may by written notice given to Landlord prior to the expiration of such sixty (60) day period, cancel such election, and in such case the Term shall be deemed renewed or extended in favor of Tenant or the Leasehold Mortgagee, or its nominee, as shall be specified in Leasehold Mortgagee's notice, without the necessity for the execution or delivery of any further instrument, and if the Leasehold Mortgagee has designated itself or its nominee, at the request of Landlord or the Leasehold Mortgagee, or its nominee, Landlord and the Leasehold Mortgagee, or its nominee shall enter into a new lease for the Extension Term as provided in Section 19.9 below.

4.2.3 Landlord's Option Expiration Notice. In the event Tenant, on or prior to one hundred eighty (180) days prior to the end of the current Term, has failed to give Landlord either a notice of exercise of the then applicable Option in accordance with Section 4.2.1. or a Termination Notice in accordance with Section 4.2.2, then as a condition precedent to the termination of this Lease, Landlord shall give Tenant and any Leasehold Mortgagee whose name and address has been provided to Landlord, a written notice ("**Landlord's Option Expiration Notice**") stating that this Lease will terminate unless, within ninety (90) days following the date Landlord gives the Landlord's Option Expiration Notice, Tenant or such Leasehold Mortgagee gives Landlord written notice of exercise of the next applicable Extension Option. In the event Tenant or such Leasehold Mortgagee gives such notice of exercise within the ninety (90) day period, and provided there is no continuing and uncured default as provided in Section 4.2.1, the then applicable Extension Option shall be deemed exercised for all purposes; however, if Tenant or such Leasehold Mortgagee fails to give such notice of exercise on or before ninety (90) days following the date Landlord gives the Landlord's Option Expiration Notice, this Lease shall terminate for all purposes on the later to occur of (i) the expiration of then current Term; or (i) the expiration of ninety (90) days following the date Landlord gives Landlord's Option Expiration Notice to Tenant or such Leasehold Mortgagee.

4.3 Tenant's Pre-Commencement Right of Entry. Before the Commencement Date, Tenant, its agents, employees, contractors, or subcontractors, prospective lenders and investors have been given the right of access to the Premises to test, inspect, and evaluate the Premises as Tenant deemed appropriate. To the extent Tenant has not done so prior to the Effective Date, Tenant shall promptly restore any alterations made to the Premises by Tenant, or at Tenant's instance or request, and Tenant shall pay for all work performed by Tenant, or at Tenant's instance or request. Any and all liens on any portion of the Premises resulting from the actions or requests or otherwise at the instance of Tenant shall be removed by Tenant at its expense within thirty (30) days after written notice thereof is received by Tenant. Tenant shall, at Tenant's expense, defend, indemnify, and hold harmless Landlord from and against any and all obligations, claims, loss, and damage, including costs and reasonable attorneys' fees, to the extent the same are caused by Tenant's entry upon or inspection of the Premises. Following Tenant's receipt of written request from Landlord, Tenant shall provide Landlord in a commercially reasonable timeframe with copies of test and reports obtained by Tenant; provided however, such tests and reports shall be provided without any representation or warranty whatsoever as to accuracy or completeness. Tenant's obligations under this Section 4.3 to restore, to pay for all work, to remove liens, and to defend indemnify and hold Landlord harmless shall survive the expiration or earlier termination of this Lease.

4.4 Title Insurance. Landlord has provided Tenant with a Title Insurance Commitment ("**Title Commitment**") with an Effective Date of February 4, 2016 issued by Fidelity National Title Company ("**Title Company**"). Tenant will pay the premium for the ALTA leasehold title insurance policy described in the Title Commitment. Landlord shall make arrangements with the Title Company such that, concurrently with the execution of this Ground Lease, the Title Company shall be unconditionally prepared to deliver to Tenant, at Tenant's expense, Title Company's standard coverage ALTA Extended Coverage Owner's Policy of Title Insurance together with an ALTA Endorsement Form 13 (Leasehold-Owners) dated as of the Effective Date, showing a good and marketable leasehold interest in the Real Property vested in Tenant and insuring Tenant in the amount equal to the value of the Real Property and the Improvements that the Premises is free and clear of all covenants, rights, rights of way, easements, liens, encumbrances, or other matters affecting title to or use of the Real Property except: (i) only those exceptions shown in the Title Commitment that have been approved in writing by Tenant prior to the Effective Date; and (ii) the customary printed exceptions.

5 Rent

5.1 Construction Rent. Tenant shall initially pay to Landlord, in United States Dollars, rent ("**Construction Rent**") in the annual amount of \$164,851. Construction Rent shall be payable in equal monthly installments in the amount of \$13,737.58 each, commencing on the Commencement Date, and continuing until the "Base Rent Start Date" as defined in Section 5.2 below. Construction Rent shall be payable in advance on the first day of each calendar month, with appropriate proration for any

partial calendar month, at the address given for Landlord in Section 18.3; as such address may be changed in accordance with Section 18.3. Notwithstanding anything in this Lease to the contrary, the obligation for payment of Construction Rent ceases upon the Tenant's commencement of the payment of Base Rent.

5.2 Base Rent. Tenant shall pay to Landlord, in United States Dollars, beginning on the Base Rent Start Date, Base Rent in the annual amount of \$329,702 payable monthly in the amount of \$27,475.17. The "**Base Rent Start Date**" shall be the **earlier of** (i) the date Tenant is issued a final Certificate of Occupancy or equivalent approval from the applicable governmental agency which permits Tenant to occupy the Improvements or any portion thereof; or (ii) the date which is eighteen (18) months following the Commencement Date. Base Rent shall be payable in monthly installments, in advance on the first day of each calendar month, with appropriate proration for any partial calendar month or Lease Year, at the address given for Landlord in Section 18.3, as such address may be changed in accordance with Section 18.3. Base Rent shall be adjusted as provided in Section 5.3 below. Landlord shall apply the Deposit (described in Section 5.6), including accrued interest thereon, first to the payment of Construction Rent, and the excess, if any, to the payment of Base Rent.

5.3 Base Rent Adjustments.

5.3.1 Base Rent Fixed Adjustments (Initial Term). On the fifth (5th) anniversary of the Commencement Date, and every five (5) years thereafter during the Initial Term (each such date being an "**Initial Term Base Rent Adjustment Date**"), the Base Rent then in effect shall be increased by ten percent (10%).

5.3.2 Base Rent/First CPI Index Adjustment – First Extension Term. In the event Tenant exercises the Extension Option to extend the Term for the First Extension Term, then effective as of the first day of the First Extension Term (the "**First CPI Adjustment Date**"), the Base Rent shall be adjusted as follows:

5.3.2.1 Base Rent (the initial Base Rent in the amount of \$329,702) shall be increased by an amount equal to the percentage increase in the CPI Index (as defined below) which has occurred from the Commencement Date to the last day of the Initial Term. Notwithstanding the foregoing, in no event shall the Base Rent beginning on the first day of the First Extension Term be less than the Base Rent in effect for the last year of the Initial Term, and no event shall the increase in the Base Rent be greater than thirty (30) % of the Base Rent in effect for the last year of the Initial Term. When the new Base Rent is determined, Landlord shall give Tenant written notice to that effect showing how the new Base Rent was computed. If the new Base Rent cannot be determined by the First CPI Adjustment Date, Tenant shall continue paying the then current Base Rent until such time as the

new Base Rent is determined. When the new Base Rent is determined, Landlord shall give Tenant written notice to that effect showing how the new Base Rent was computed and Tenant shall pay the new Base Rent retroactive to the First CPI Adjustment Date.

5.3.2.2 By way of example of the adjustment to be made under Section 5.3.2.1 above, assuming (i) the CPI Index has increased 45% from the Commencement Date thru the last day of the of the Initial Term, and (ii) the Base Rent for the last year of the Initial Term was \$438,833 (i.e., the initial Base Rent as adjusted 10% every 5 years as provided in Section 5.3.1 above) then the Base Rent payable on the first day of the First Extension Term would be increased to \$478,068 annually ($\$329,702 \times 45\% = \$148,366$; $\$329,702 + \$148,366 = \$478,068$). Based on the same assumptions, except that (x) the CPI Index only increased 30% from the Commencement Date thru the last day of the of the Initial Term, and (y) the Base Rent for the last year of the Initial Term was \$438,833 (i.e., the Base Rent as adjusted 10% every 5 years as provided in Section 5.3.1 above), the Base Rent commencing the first day of the First Extension Term shall remain at \$438,833. [$\$329,702 \times 30\% = \$98,911$; $\$329,702 + \$98,911 = \$428,613$.] Since \$428,613 is less than the Base Rent in effect for the last year of the Initial Term (\$438,833), there would be no downward adjustment. For further purposes of illustration, based on the same assumptions, except that (x) the CPI Index increased 75% from the Commencement Date thru the last day of the of the Initial Term, and (y) the Base Rent for the last year of the Initial Term was \$438,833 (i.e., the Base Rent as adjusted 10% every 5 years as provided in Section 5.3.1 above), the Base Rent commencing the first day of the First Extension Term would be \$570,483. [$\$438,833 \times 1.3 = \$570,483$; $\$329,702 \times 1.75 = \$576,979$]. Since the 75% increase in the CPI as applied to the initial Base Rent (\$329,702) would result in an increase in the Base Rent in effect for the last year of the Initial Term by more than 30%, the adjustment to Base Rent would be capped at 30%.

5.3.3 Base Rent Fixed Adjustments During First Extension Term. In the event Tenant exercises the Extension Option to extend the Term for the First Extension Term, then at the commencement of the 26th Lease Year, 31st Lease Year, and 36th Lease Year, the Base Rent then in effect shall be increased by ten percent (10%).

5.3.4 Base Rent/Second CPI Index Adjustment –Second Extension Term. In the event Tenant exercises the Extension Option to extend the Term for the Second Extension Term, then effective as of the first day of the Second

Extension Term (the “**Second CPI Adjustment Date**”), the Base Rent shall be further adjusted as follows:

5.3.4.1 The Base Rent (the initial Base Rent in the amount of \$329,702) shall be increased by an amount equal to the percentage increase in the CPI Index (as defined below) which has occurred from the Commencement Date to the last day of the First Extension Term (Lease Year 40). Notwithstanding the foregoing, in no event shall the Base Rent beginning on the first day of the Second Extension Term be less than the Base Rent in effect for the last day of the First Extension Term, and no event shall the increase in be greater than thirty (30) % of the Base Rent in effect for the last year of the First Extension Term. When the new Base Rent is determined, Landlord shall give Tenant written notice to that effect showing how the new Base Rent was computed. If the new Base Rent cannot be determined by the Second CPI Adjustment Date, Tenant shall continue paying the then current Base Rent until such time as the Base Rent is determined. When the new Base Rent is determined Landlord shall give Tenant written notice to that effect showing how the new Base Rent was computed and Tenant shall pay the new Base Rent retroactive to the Second CPI Adjustment Date.

5.3.5 Base Rent Fixed Adjustments During Second and Third Extension Term. In the event Tenant exercises the Extension Option to extend the Term for the Second Extension Term and Third Extension Option, Commencing with the first day of the 46th Lease Year, and every five (5) years thereafter during the remaining Term of the Lease, the Base Rent then in effect shall be increased by ten percent (10%).

5.3.6 CPI Index. As used herein, the “**CPI Index**” shall mean the Consumer Price Index for all Urban Consumers, Denver, Boulder, Metro Area - All Items Index (CPI-U, 1982-84 = 100), published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is published with numbers issued other than on a monthly basis, the CPI Index used for purposes of making the adjustments to Rent shall be the CPI Index number published for the date closest to the Commencement Date or the applicable adjustment date. If the CPI Index is discontinued, the CPI Index adjustment shall be made using comparable statistics on the cost of living for the Denver, Boulder metropolitan area as computed and published by any agency of the United States Government or by a responsible financial periodical or recognized authority selected in the reasonable discretion of Landlord.

5.4 Net Lease. This Lease is a net lease. Except as may be expressly provided otherwise in this Lease, all costs incurred in connection with the construction, operation, maintenance and leasing of the Improvements and all Real Estate Taxes and other costs incurred in connection with and in relation to the Premises shall be

paid by Tenant. Landlord shall have no obligation to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Improvements or the Premises.

- 5.5 Security Deposit; Pre-Development Rent. Pursuant to the terms of that certain Letter of Intent ("**Letter of Intent**") entered into between and Landlord and Tenant dated February 15, 2013 and mutually executed on February 28, 2013 (as amended), Tenant has deposited the amount of Two Hundred Thousand Dollars (\$200,000.00) as a security deposit ("**Deposit**") into an interest bearing account with Fidelity National Title Company, as Escrow Agent ("**Escrow Agent**"). The Letter of Intent provides in pertinent part that the Escrow Agent will disburse the amount of \$10,000 per month from the Deposit to Landlord (the "**Pre-Development Rent**") on the terms and conditions set forth in the Letter of Intent. At the time of Tenant's payment of the first monthly installment of Construction Rent, all Pre-Development Rent received by Landlord as of that date shall be applied to the payment of the Construction Rent and/or Base Rent as it becomes due. Notwithstanding anything in this Lease to the contrary, in the event of a conflict between the terms and conditions of this Lease and the terms and conditions of the Letter of Intent, the terms and conditions of this Lease shall control.
- 5.6 Base Rent Credit/Brokerage Fees. The Letter of Intent provides in pertinent part that Landlord shall provide Tenant with a credit against the payment of Base Rent ("Base Rent Credit") in an amount equal to one half (1/2) of the commission paid to the Broker but Landlord's share of the commission shall in no event exceed 1.75% of the Base Rent for the first 20 years of this Lease. Accordingly, the Base Rent Credit shall not exceed \$133,888.00. The amount of the Base Rent Credit shall be divided by 60 and applied in equal installments against the first 60 months of Base Rent payable during the Initial Term.

6 Taxes

- 6.1 Real Estate Taxes. Commencing on the Commencement Date and continuing during the Term of this Lease, Tenant shall assume, pay, bear, and discharge any and all Real Estate Taxes with respect to the Premises, or any part thereof, and all other taxes in any manner applicable to or assessed against the Premises or Buildings or any part thereof, or against any of the machinery, fixtures, equipment, or other property or items. Tenant shall pay all Real Estate Taxes directly to the taxing authorities and Tenant shall be credited all reimbursements on account of abatements, refunds, or rebates of Real Estate Taxes during the Term. Landlord hereby authorizes Tenant to file and pursue any protest of the valuation of the Premises and abatement petitions for abatement of taxes for any reason, as Tenant may deem to be appropriate. Landlord agrees to reasonably cooperate and execute any form of agreement as may be necessary in connection therewith.
- 6.2 Separate Tax Parcels. In the event the Premises are now included in a larger tax parcel owned by Landlord, Landlord, at Landlord's sole cost and expense, shall take such actions as may be necessary to make the Premises a separate Tax Parcel or Tax Parcels. Tenant shall cooperate with Landlord in such action.

- 6.3. Special Assessments. In the event there is a special assessment which is included within the definition of Real Estate Taxes herein, and such assessment may be paid in periodic installments, Tenant shall pay such in such periodic installments or at Tenant's sole option, may prepay or elect to retire the principal indebtedness on any special assessment and Tenant shall be responsible only for those installments relating to the period included within the Term, based upon the maximum number of installments in which the same may be paid. In the event of any proposed special assessment which would provide for payments extending beyond the Initial Term, unless Tenant agrees to pay for all of such assessment, Landlord shall have the right to participate in the process of approving or rejecting such assessment.
- 6.4. Invoices. Landlord shall cooperate with Tenant so that all invoices for Real Estate Taxes shall be sent directly by the taxing authority to Tenant. Landlord agrees to submit to Tenant any invoices for Real Estate Taxes and notices of special assessments with respect to the Premises which are sent to Landlord within thirty (30) days after receipt by Landlord. Landlord shall furnish Tenant with copies of all Notices of Valuation of the Premises which are sent to Landlord within ten (10) days after receipt thereof and in sufficient time to allow Tenant to determine whether or not to contest any increase in Real Estate Taxes or valuation. If Tenant desires to contest such increase, Tenant shall protest such valuation or file an abatement petition within applicable statutory time periods. Landlord shall fully cooperate with Tenant in any such proceeding.
- 6.5. Proration of Taxes. If the Term shall expire on any date other than December 31st of any year, the amount payable by Tenant during the calendar year in which such termination occurs shall be prorated on the basis which the number of days from the commencement of said tax fiscal year to and including said termination date bears to 365. A similar proration shall be made for the tax fiscal year in which the Term commences.
- 6.6. Personal Property Taxes. Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant (collectively "Personal Property Taxes"). Tenant may contest any such Personal Property Taxes, assessments or valuations; provided, however, Tenant shall do so within the time period permitted by applicable statutes.
- 6.7. Taxes Payable in Installments. Should any Real Estate Taxes or Personal Property Taxes (sometimes collectively referred to as "Taxes") be levied on or assessed against the Premises and/or Improvements that may be either paid in full prior to a delinquency date within the Term or paid in installments over a period either within or extending beyond the Term, Tenant may elect to pay such Taxes in installments. Should Tenant elect to pay any such Taxes in installments, Tenant shall be liable to pay only those installments becoming due during the Term. Landlord shall cooperate with Tenant and on written request of Tenant execute or join with Tenant in executing any instruments required to permit any such Taxes to be paid in installments.

7 Utilities/Maintenance and Repair Obligations

- 7.1 Utilities. Tenant shall assume, bear, pay, and discharge as its sole and separate obligation all of the applicable charges for all utilities consumed on the Premises. Except in the event of an emergency, neither Landlord nor Tenant shall take any action which shall interrupt or interfere with any utility service, including electric, gas, water, sewage, telephone or data communication service to the Premises or to the adjoining property owned by Landlord. The obligation of Tenant to pay for utility service to the Premises shall begin on the Commencement Date.
- 7.2 Repair and Maintenance Obligations. Tenant shall be solely responsible for the maintenance of the Real Property and the Improvements during the Term, at Tenant's sole cost and expense. Landlord shall not be obligated to maintain or to make any repairs, replacements, or renewals of any kind, nature or description whatsoever to the Real Property or Improvements thereon.
- 7.3 Alterations and Improvements. Tenant shall have the right to alter the Real Property and the Improvements, as Tenant from time to time determines to be appropriate (e.g., through the construction of buildings, structures and other facilities, including, but not limited to, any and all utility lines, pipes, connections, fixtures, machinery, equipment, signs, furniture, furnishings, appointments and other personal property that Tenant determines to be reasonably necessary or appropriate in connection with Tenant's ownership and operation of the Premises and Improvements). All alterations, additions and improvements made or constructed by Tenant shall be made or constructed in a good and workmanlike manner, in full compliance with all laws and ordinances applicable thereto. Except as otherwise provided in this Lease, all such additions, alterations, changes and improvements shall be and remain the property of Tenant.

8 Use, Assignment and Subletting

- 8.1 Permitted Use. Tenant may use and occupy the Premises during the Term of the Lease for any lawful use in accordance with the requirements of this Lease, including, without limitation, the development of the Premises for mixed use/multifamily residential development purposes (the "**Permitted Use**").
- 8.2 Assignment and Subletting.
- 8.2.1 Assignment Prior to Completion of the Improvements. Prior to the completion of the Improvements, Tenant shall assign this Lease only with the prior written approval of Landlord, in Landlord's sole discretion; provided, however, no such approval shall be required if the assignment is to an entity controlled by Tenant, provided, further, in any event Tenant shall also remain liable for payment and performance required by Tenant under this Lease. For purposes of this Section 8.2.1, "an entity controlled by Tenant" shall mean entity in which management control is vested, directly or indirectly by Tenant, an affiliate of Tenant or the principals of Tenant (including, without limitation any entity formed by Tenant, the

principals of Tenant or their affiliates with institutional and/or private capital partners for the purpose of the development, construction, ownership and operation of the Improvements to be constructed on the Premises.

- 8.2.2 Assignment Following Completion of the Improvements Except as otherwise specifically in this Lease, following completion of the Improvements, as evidenced by a final Certificate of Occupancy for all of the Improvements, Tenant may assign this Lease only with the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, Landlord's approval shall not be required if the assignment is to an entity in which management control is vested, directly or indirectly by Tenant, an affiliate of Tenant or the principals of Tenant (including, without limitation any entity formed by Tenant, the principals of Tenant or their affiliates with institutional and/or private capital partners for the purpose of the development, construction, ownership and operation of the Improvements to be constructed on the Premises.
- 8.2.3 Tenant's Right to Sublease. Tenant may permit the use of all or any portion of the Premises by any person other than Tenant, or sublet all or any portion of the Premises without the consent or approval of Landlord. Landlord shall accept performance by any subtenant or occupancy tenant of any of the terms and provisions of this Lease required to be performed by Tenant with the same force and effect as though performed by Tenant. Without limitation of the foregoing, Tenant may sublease individual multifamily residential units and retail/commercial premises in the ordinary course of Tenant's business without Landlord's consent. In no event shall any sublease extend beyond the Term. Except for subleases to individual multifamily residential units in the ordinary course of Tenant's business, and sublease to retail/commercial tenants in the ordinary course of Tenant's business, Tenant shall deliver to Landlord a copy of all other subleases. Except as provided in Section 19 of this Lease, Tenant shall not pledge, hypothecate or encumber this Lease, or any interest therein.
- 8.2.4 Transfer Notice. If Tenant desires at any time to enter into an assignment, transfer, pledge, hypothecation, encumbrance or occupation of, or the use of the Premises (collectively "Transfer") which requires Landlord's consent, Tenant shall provide Landlord with written notice ("Transfer Notice") at least thirty (30) days prior to the proposed effective date of the Transfer. The Transfer Notice shall include (i) the name of the proposed transferee, (ii) the nature of the proposed Transfer; (iii) the proposed effective date of the Transfer; and (iv) a statement of the proposed transferee's qualifications and experience in the ownership, operation and management of developments of a size, type and quality similar to the project to be constructed on the Premises by Tenant, and (v) reasonable evidence that the proposed transferee has the capacity to fulfill the financial obligations of the Tenant under this Lease (all of which

information Landlord can consider in determining whether or not to consent to the transfer). At any time within twenty (20) days after Landlord's receipt of the information specified above, Landlord may, by written notice to Tenant, elect to either consent to the Transfer, or reasonably disapprove the Transfer, setting forth in writing Landlord's specific grounds for doing so. If Landlord fails to respond to Tenant's request for consent to such Transfer by the expiration of such twenty (20) day period, then the proposed Transfer shall be deemed approved.

8.2.5 Assumption of Lease Obligations. Any assignment of this Lease shall be effective only upon delivery to Landlord of an instrument effecting an assignment of this Lease by Tenant, executed by Tenant and the assignee. Each assignee shall agree to assume, be bound by, and perform all terms, covenants, and conditions of this Lease to be kept and performed by Tenant and which arise after the effective date of the assignment. After execution of the assignment or sublease, Tenant will forward a completed copy thereof to Landlord. Upon the delivery to Landlord of such written agreement, the assignor of this Lease shall be relieved of all obligations under this Lease following the effective date of the Transfer; provided however, Tenant shall not be released from any obligations which have accrued and/or remain unsatisfied prior to the effective date of such Transfer.

8.3 Tenant's Right to Mortgage Leasehold. Notwithstanding anything in this Lease to the contrary Tenant may assign and encumber this Lease without Landlord's prior written consent in accordance with Article 19.

9 Mechanics Liens

9.1 Liens. Tenant shall promptly pay when due the entire cost of all work done to the Premises by or at the request of Tenant (including but not limited to work done prior to the Effective Date) and Tenant shall keep the Premises free of liens for labor or materials. Should mechanics', materialmen's, or other liens be filed against the Premises, Tenant shall cause the lien to be canceled and discharged of record, or shall file a bond in substitution of the mechanic's lien in accordance with the provisions of Colorado Revised Statute 38-22-131, *et. seq.*, within forty-five (45) days of Tenant's receipt of notice of such lien. Notwithstanding the foregoing, Tenant may contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien, provided that Tenant shall give to Landlord such security as Landlord may reasonably request ensure the payment of any amounts claimed. If the Tenant contests a lien or claimed lien, then on final determination of the lien or claimed lien, the Tenant shall cause the lien to be released and, in the event of an adverse judgment, satisfy such judgment.

9.2 Protection of Landlord's Interest in Premises. Nothing in this Lease shall be construed as giving Tenant or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of any

mechanics' liens or other claims against the fee of the Premises or the Improvements thereon. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises (at locations approved by Tenant) any notices which Landlord may deem necessary for the protection of Landlord and its interest in the Premises and the improvements thereon from mechanics' liens or other claims.

10 Indemnity and Insurance

10.1 Indemnification of Landlord. From and after the Effective Date and continuing at all times thereafter during the Term hereof:

10.1.1 Tenant assumes all risk of loss, damage, or destruction to the Premises, Improvements, Buildings and contents, or to any other property brought upon the Premises, Improvements, and Building by Tenant, or by any other person, with or without the consent or knowledge of Tenant. Tenant hereby indemnifies and agrees to protect and defend Landlord from all such loss, damage, or destruction including claims and causes of action asserted against Landlord.

10.1.2 To the fullest extent permitted by law, Tenant shall indemnify and save harmless Landlord from any and all claims, losses, damages, or expenses, on account of injuries to or death of any and all persons whomsoever while on the Premises, and any and all loss or destruction of or damage to the Premises, the Improvements, the Building and any contents and personal property located upon the Premises and owned by, rented to, or in the care, custody, or control of the parties hereto, or any of Tenant's subtenants, arising or growing out of, or in any manner connected with: (i) any use and occupancy of the Premises by Tenant or any subtenants for a permitted use or otherwise; (ii) caused or occasioned, in whole or in part, by reason of or arising during the presence upon the Premises of the person or the property of the Tenant, its officers, employees, agents, subtenants, renters, customers, invitees, licensees, servants, contractors, subcontractors, materialmen, suppliers, workmen, laborers, and the employees and agents of each of the foregoing, or any and all other persons, invited or otherwise, with or without Tenant's consent, while on the Premises; (iii) arising out of or resulting from Tenant's development, sale or marketing of the Premises and/or the Improvements; and (iv) any plans or designs for the Improvements prepared by or on behalf of Tenant.

10.1.3 The foregoing indemnification obligations of Tenant shall not apply to any injuries, death, claims, losses, damages and expenses to the extent arising as a result of any negligence, willful misconduct or intentional acts of Landlord or its officers, employees, contractors or agents.

10.2 Indemnification of Tenant. Landlord hereby agrees to indemnify and save harmless Tenant, to the fullest extent permitted by law, from any and all claims, losses, damages, or expenses, on account of injuries to or death of any and all

persons whomsoever while on the Premises, and any and all loss or destruction of or damage to the Premises, the Improvements and any contents and personal property located upon the Premises and owned by, rented to, or in the care, custody, or control of Tenant, or any of Tenant's officers, employees, contractors, subcontractors, agents or subtenants, arising from the negligence or willful misconduct or intentional acts of Landlord, its officers, employees, contractors or agents.

10.3 Defense Obligations. Landlord and Tenant further agree, that if it is the indemnifying party, that it will appear and defend at its own expense, in the name and on behalf of the indemnified party, all claims or suits for injuries to or death of persons or loss or destruction of or damage to property arising or growing out of or in any manner connected with or caused or occasioned by or in connection with its indemnities set forth in this Article 10.

10.4 Insurance.

10.4.1 Property Insurance. During the period of construction of the Improvements on the Premises, Tenant shall keep or require its general contractor to keep, a policy of builders risk insurance covering loss or damage to the Improvements for the full replacement cost of all such construction, naming Tenant's Leasehold Mortgagee, if any, as a loss payee. During the Term (including any Extension Term), Tenant shall keep in full force and effect a policy of "all risk", special form or equivalent form property insurance covering loss or damage to the Premises in the amount of the full replacement cost of the Buildings and other Improvements on the Real Property, with a commercially reasonable deductible, naming Tenant's Leasehold Mortgagee, if any, as a loss payee.

10.4.2 Liability Insurance. During the Term, Tenant shall keep in full force commercial general liability insurance policy ("**CGL Policy**"), with bodily injury and property damage coverage with respect to the Premises and business operated by Tenant on the Premises. The limits of such CGL Policy shall be not less than \$2,000,000.00 combined single limit for bodily injury and property damage, with a commercially reasonable deductible. Following at least sixty (60) days prior written notice from Landlord, the CGL Policy combined single limit for bodily injury and property damage requirement may be increased by Landlord, but not more than once in any five (5) year period, to a commercially prudent and reasonable amount, based upon the then current general liability insurance conditions prevailing in the metropolitan Denver market; provided however, in no event shall the insurance limits be increased beyond those amounts typically carried by owners of similar multifamily residential developments in Denver, Colorado. Nothing herein shall preclude Tenant from providing the initial \$2,000,000 in coverage required pursuant to this Section 10.4.2 by way of primary coverage and any additional coverage which may be required by way of "following form" umbrella coverage.

- 10.4.3 Workers' Compensation Insurance. To the extent required by law, Tenant shall maintain workers' compensation insurance covering its employees in statutory limits, naming Tenant's Leasehold Mortgagee, if any, as a loss payee.
- 10.4.4 Automobile Liability. Tenant shall maintain at all times during the Term garage liability insurance covering liability arising out of the use of (i) all Tenant owned vehicles, (ii) all vehicles hired or leased by Tenant and (iii) all non-owned and borrowed vehicles.
- 10.4.5 Form of Policies. All insurance required by this Section shall be with insurers licensed or otherwise permitted to conduct business in the State of Colorado. Any insurance hereunder may be provided under blanket policies of insurance. The property and liability insurance maintained by Tenant pursuant to Sections 10.4.1 and 10.4.2 shall name Tenant as insured and Landlord as additional insured, and at Landlord's written request, any Fee Mortgagee, as additional insured, as their interests may appear.
- 10.4.6 General Insurance Requirements. All policies of insurance (other than self-insurance) enumerated above shall be provided by insurance carriers having at policy commencement a General Policyholder's Rating of not less than A- and a financial rating of VII or better, in the most current issue of Bests Key Rating Guide; provided, however, that if the rating of any such insurer falls below such level, such rating reduction shall not constitute a default hereunder provided all renewals of such policies shall be with carriers with a Best rating of not less than A- VII at the time of such renewal. An increased coverage or "umbrella" policy may be provided and utilized by either party to increase the coverage provided by individual or blanket policies in lower amounts, and the aggregate coverage provided by all such policies with respect to the Premises and Tenant's liability hereunder shall be satisfactory provided that such policies otherwise comply with the provisions of this Article 10.
- 10.4.7 Mutual Waiver of Right of Recovery and Subrogation. With respect to any loss covered by insurance or required to be covered by property insurance hereunder, Landlord and Tenant hereby waive any and all rights of recovery against each other for any loss or damage to the Premises or the contents contained therein, or for loss of income on account of fire or other casualty; and each party's aforesaid policies of insurance shall, to the extent available, contain appropriate provisions recognizing this mutual release and waiving all rights of subrogation by the respective insurance carriers.
- 10.4.8 Evidence of Insurance. On or before the Commencement Date, Tenant shall cause to be issued to Landlord certificates of insurance evidencing compliance with the applicable covenants of this Article 10. Tenant shall use commercially reasonable efforts to obtain from the insurer a certificate

which provides that the certificate holder will be given at least thirty (30) days' notice prior to cancellation; provided, however, if Tenant is unable to obtain such provision, then Tenant agrees to provide to Landlord at least thirty (30) days' notice of any anticipated cancellation of an existing insurance policy.

10.4.9 Self Insurance. Tenant shall have the right to self-insure in lieu of providing the insurance required under this Article provided it complies with all of the following:

10.4.9.1 Tenant shall have delivered to Landlord a certification from an independent public accountant reasonably satisfactory to Landlord that as of the end of Tenant's most recently ended fiscal year, Tenant had a net worth of at least \$100,000,000.00 computed in accordance with Generally Accepted Accounting Principles, consistently applied,

10.4.9.2 Tenant has delivered to Landlord an Agreement reasonably satisfactory to Landlord agreeing to indemnify and hold Landlord harmless from and against any loss and liability to the extent such loss and liability would have been covered under the policies of insurance required under other provisions of this Article, and

10.4.9.3 Within 90 days after the end of each fiscal year, Tenant has delivered to Landlord a certification from an independent public accountant reasonably satisfactory to Landlord that as of the end of the fiscal year just ended, Tenant had a net worth of at least \$100,000,000.00 computed in accordance with Generally Accepted Accounting Principles, consistently applied, and if Tenant fails to deliver such certification within the time required, Tenant will immediately obtain the insurance required by, and comply with, the other provisions of this Article 10.

11 Damage or Destruction

11.1 Damage of Improvements. If the Premises or any of the Improvements are damaged or destroyed during the Initial Term or any Extension Term by fire, flood, act of God, act of terrorism or other casualty ("**Casualty**"), then except as specifically provided below, this Lease shall continue in effect, and Tenant shall continue to pay the Rent without abatement. Notwithstanding the foregoing, Tenant shall not have any obligation to repair and/or rebuild the Improvements damaged by any Casualty. No later than one hundred twenty (120) days after any Casualty, Tenant shall deliver written notice ("**Casualty Notice**") to Landlord stating whether Tenant (subject to the rights of any Leasehold Mortgagee, including the rights of any Leasehold Mortgagee to participate in the adjustment of any losses of insurance proceeds related to the Casualty) has elected to either (i) repair and/or rebuild the Improvements; or (ii) not to repair and/or rebuild the

Improvements. If Tenant elects to repair and/or rebuild the Improvements then the Casualty Notice shall include Tenant's commercially reasonable judgment as to: (x) the period of time within which such damage or destruction can be completely repaired; (y) the estimated cost to repair such damage or destruction (the "Repair Cost"); and (z) the estimated proceeds from insurance that Tenant reasonably anticipates to receive. Alternatively, if Tenant elects not to repair and/or rebuild the Improvements, Tenant shall advise the Landlord in the Casualty Notice and within a reasonable period of time, at Tenant's sole cost and expense (a) provide a slightly barrier, (b) remove all debris from the damaged portion of the Improvements, (c) remove and dispose of all Hazardous Substances in accordance with applicable legal requirements, and (d) take such other actions as may be required under applicable municipal, ordinances, county codes, rules and regulations and other laws, rules and regulations with respect to any damage or destruction of the Improvements. In the event Tenant elects not to repair or rebuild those Improvements damaged by the Casualty and no remaining portion of the Improvements are functional, Tenant shall, at its sole cost and expense, at Landlord's written request and within a reasonable period of time, also (e) demolish and remove all remaining Improvements on the Premises, (f) remove foundations and footings, and (g) restore the Premises to substantially the condition that existed on the Commencement Date, including filling and grading the Premises in a safe and slightly manner as existed on the Commencement Date, or seed such portion of the Premises as designated by Landlord.

- 11.2 Repair and Restoration. In the event Tenant elects to repair and/or rebuild the Improvements, prior to commencing work, Tenant shall provide evidence reasonably satisfactory to Landlord that Tenant has sufficient funds to complete the work or that Tenant has, or that sufficient insurance proceeds are or will be made available to complete the work, and Tenant shall promptly commence and diligently complete all such work. All repair and/or restoration work shall be performed in a good and workmanlike manner and shall be subject to all provisions of this Lease applicable to construction of the Improvements.
- 11.3 Damage or Destruction During Last Two Years of Term. If the Casualty occurs during the last two (2) years of the Initial Term or any Extension Term, Tenant may (provided that it has first obtained the written consent of any Leasehold Mortgagee) elect to terminate this Lease by stating such intent in the Casualty Notice. In the event of any such termination, Tenant shall within a reasonable period of time after such notice (a) provide a slightly barrier, (b) demolish and remove all Improvements on the Premises, (c) clear debris, (d) remove foundations and footings, (e) remove and dispose of all Hazardous Substances in accordance with applicable legal requirements, (f) take such other actions as may be required under applicable municipal, ordinances, county codes, rules and regulations and other laws, rules and regulations with respect to any damage or destruction of the Improvements, and (g) restore the Premises to substantially the condition that existed on the Commencement Date, including filling and grading the Premises in a safe and slightly manner as existed on the Commencement Date, or seed such portion of the Premises as designated by Landlord.

11.4 Application of Insurance Proceeds. In the event a Casualty occurs prior to the last two (2) years of the Initial Term or any Extension Term, or if during the last two (2) years of the Initial Term or any Extension Term and Tenant elects to repair and/or rebuild the Improvements damaged by fire or other casualty or cause, all insurance proceeds shall be retained by Tenant subject to the rights of any Leasehold Mortgagee. In the event a Casualty occurs during the last two (2) years of the Initial Term or any Extension Term and Tenant elects to not repair and/or rebuild the Improvements damaged by fire or other casualty or cause, subject to the rights of any Leasehold Mortgagee, the insurance proceeds shall first be applied to any Leasehold Mortgage and any excess proceeds shall be used first to pay the present value of any Rent remaining until the end of the current term of the Lease, next to the cost of the work required to be performed by Tenant under Section 11.3, and to the extent there are any remaining proceeds, such proceeds shall be retained by and belong to the Landlord.

12 Eminent Domain

12.1 Definition of Taking and Substantial Taking. For the purpose of this Lease, a "**Taking**" shall mean any condemnation or exercise of the power of eminent domain by any authority vested with such power or any other taking for public use, including a private purchase in lieu of condemnation by an authority vested with the power of eminent domain; the "**Date of Taking**" shall mean the earlier of (i) the date upon which title to the Premises or any portion thereof or any right appurtenant thereto so taken is vested in the condemning authority; or (ii) the date upon which possession of the Premises or any portion thereof is taken by the condemning authority; and "**Substantially All of the Premises**" shall mean means the Taking of so much of the Premises or Improvements or both that one or more of the following conditions results: (i) the remainder of the Premises would not be economically and feasibly usable by Tenant as reasonably determined by Tenant; and/or (ii) a reasonable amount of reconstruction would not make the Premises and Improvements a practical improvement and reasonably suited for the uses and purposes for which the Premises were being used prior to the Condemnation; and/or (iii) the conduct of Tenant's business on the Premises would be materially and substantially prevented or impaired reasonably determined by Tenant.

12.2 Tenant's Rights Upon Taking or Substantial Taking. Each party agrees to furnish the other a copy of any notice of a threatened or proposed Taking received by such party. In the event of a Taking of Substantially All of the Premises, this Lease shall terminate and both Landlord and Tenant shall be relieved from all further obligations hereunder from and after the Date of Taking. All Base Rent and other sums payable by Tenant hereunder shall be apportioned and paid through and including the Date of Taking, and neither Landlord nor Tenant shall have any rights in any compensation or damages payable to the other in connection with such Taking.

12.3 Tenant's Rights Upon Less Than Substantial Taking. In the event of a Taking of less than Substantially All of the Premises, Base Rent and other charges shall be reduced fairly and equitably in accordance with the portion condemned or taken,

effective as of the Date of Taking. Tenant shall make all necessary restorations to the Improvements so that the portions of the Improvements not taken constitute a complete architectural unit. Subject to the rights of any Leasehold Mortgagee, the proceeds of the award attributable to the value of the Improvements taken shall be retained by Tenant.

- 12.4 Rights Upon Temporary Taking. Notwithstanding the foregoing, in the event of a Taking of the Premises or any portion thereof, for temporary use (specifically one not exceeding one hundred eighty (180) days in duration), without the Taking of the fee simple title thereto, this Lease shall remain in full force and effect, and there shall be no abatement of Rent during such period. Subject to the rights of any Leasehold Mortgagee, all awards, damages, compensation and proceeds payable by the condemnor by reason of such Taking relating to the Premises for periods prior to the expiration of the Lease shall be payable to Tenant. All such awards, damages, compensation and proceeds for periods after the expiration of the Lease shall be payable to Landlord. Anything contained in this Section 12.4 to the contrary notwithstanding, a temporary Taking for any period in excess of one hundred eighty (180) days may, at Tenant's option, be deemed a permanent Taking and shall be governed by Sections 12.2 or 12.3 above, as applicable.
- 12.5 Award. The award paid by the condemning authority (other than a Taking for temporary use) shall be allocated on a pro rata basis between the fair market value of the Premises and the Improvements as determined by the condemning authority or a court of competent jurisdiction.
- 12.6 Separate Representation. Landlord and Tenant shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of their claims. Subject to the consent and rights of any Leasehold Mortgagee to participate in any proceeding or negotiations, Tenant shall have the sole right to control the defense, prosecution and settlement of its claim to the extent the proceeding or negotiation affects Tenant's leasehold interest hereunder and/or the Improvements., Landlord shall have the sole right to control the defense, prosecution and settlement of its claim to the extent the proceeding or negotiation affects Landlord's reversionary interest in the Premises and/or Improvements. Landlord and Tenant each agrees to execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to any Taking.

13 Default

- 13.1 Events of Tenant's Default. Any of the following occurrences, conditions or acts by Tenant shall constitute an "Event of Default" by Tenant under this Lease:
- 13.1.1 Failure to Pay Rent; Breach. (i) Tenant's failure to make any payment of money required by this Lease (including without limitation Base Rent or Real Estate Taxes) (subject to Tenant's right of good faith contest with respect to Real Estate Taxes, as set forth in and as limited by Article 5), within ten (10) days after the receipt of written notice from Landlord to

Tenant that same is overdue ("**Monetary Default**"), in which event such delinquent amount shall accrue interest at the Default Rate; or (ii) Tenant's failure to observe or perform any other material provision of this Lease within thirty (30) days after receipt of written notice from Landlord to Tenant specifying such default and demanding that the same be cured ("**Non-Monetary Default**"); provided that, if such default cannot with due diligence be wholly cured within such thirty (30) day period, Tenant shall have such longer period as is reasonably necessary to cure the default, so long as Tenant proceeds promptly to commence the cure of same within such thirty (30) day period and diligently prosecutes the cure to completion. In the event Landlord is required under this Section 13.1.1 to give a notice of a monetary default during any twelve (12) month period, there shall be no charge for the first (1st) such notice, thereafter there shall be a charge of \$2500 each for all other such notices given during a twelve (12) month period to compensate the Landlord for the extra expense incurred as a result of such late payment.

- 13.1.2 **Bankruptcy.** Any petition is filed by or against Tenant under any section or chapter of the Federal Bankruptcy Code, and, in the case of a petition filed against Tenant, such petition is not dismissed within sixty (60) days after the date of such filing.
- 13.1.3 **Insolvency.** Tenant becomes insolvent or transfers property in fraud of creditors.
- 13.1.4 **Assignment for Benefit of Creditors.** Tenant makes an assignment for the benefit of creditors.
- 13.1.5 **Receivership.** A receiver is appointed for any of Tenant's assets.
- 13.1.6 **Attachment.** This Lease or Tenant's interest in the Premises or any part thereof is taken by attachment, execution or other process of law, and such attachment, execution or other process has not been released within sixty (60) days thereafter.
- 13.1.7 **Lien.** Tenant fails to obtain a release of any lien against the Premises as required under the terms of this Lease.

Notwithstanding the foregoing, in the event the Tenant continues to pay Rent as required under the terms of this Lease, no Event of Default shall occur solely as a result of Tenant's bankruptcy, insolvency, assignment for benefit of its creditors, or the appointment of a receiver for any of Tenant's assets.

- 13.2 **Landlord's Remedies.** After the occurrence of an Event of Default by Tenant (and such Event of Default remains uncured after the expiration of any applicable notice and cure period), Landlord shall have the right to institute from time to time an action or actions (i) to recover damages (exclusive of consequential or special

damages), (ii) for injunctive and/or other equitable relief, and (iii) in the event of Monetary Default only, to recover possession of the Premises and terminate this Lease.

13.2.1 Monetary Default. In the event of a Monetary Default:

(i) Continue Lease. Landlord may, at its option, terminate Tenant's right to possession of the Premises and continue this Lease in full force and effect, in which event Landlord shall have the right to collect Base Rent and other charges when due, together with Landlord's reasonable attorneys' fees and interest at the Default Rate from the date such payment was due until the date paid by Tenant. In the alternative, Landlord shall have the right, at its option to make any payment, such as Real Property Taxes, otherwise required to be made by Tenant, in which event such payment shall not be deemed a cure of Tenant's default, and Tenant shall reimburse Landlord for any such payment, together with reasonable attorneys' fees and interest at the Default Rate from the date Landlord makes such payment to the date Landlord receives such reimbursement. Landlord shall have the right to peaceably re-enter the Premises, without such re-entry being deemed a termination of the Lease or an acceptance by Landlord of a surrender thereof. Landlord shall also have the right, at its option, from time to time, without terminating this Lease, to relet the Premises, or any part thereof, following applicable legal process, as the agent, and for the account, of Tenant upon such terms and conditions as Landlord may deem advisable, in which event the Rents received on such reletting shall be applied (i) first to the reasonable and actual and documented expenses of such reletting and collection, including without limitation necessary renovation and alterations of the Premises, reasonable and actual attorneys' fees and any reasonable and actual and documented real estate commissions and consulting fees paid, and (ii) thereafter toward payment of all sums due or to become due to Landlord hereunder. If a sufficient amount to pay such expenses and sums shall not be realized, in Landlord's exercise of commercially reasonable efforts to mitigate its damages (which Landlord hereby agrees to make), then Tenant shall pay Landlord any such deficiency, and Landlord may bring an action or actions therefor as such deficiency shall arise and accrue. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Premises in excess of the Rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth below.

(ii) Terminate Lease. Landlord may terminate this Lease by written notice to Tenant specifying a date therefor, which shall be no sooner than thirty (30) days following receipt of such notice by Tenant, and this Lease shall then terminate on the date so specified as if such date had been originally fixed as the expiration date of the Term. In the event of such termination, Landlord shall be entitled to recover from Tenant all of the following as damages:

(A) The "worth at the time of the award payment" (defined below) of any obligation which has accrued prior to the date of termination.

(B) The “worth at the time of the award payment” of the amount by which the unpaid Base Rent and all other charges which would have accrued after termination until the time of award payment exceeds the amount of any sums (net of reletting costs and expenses) actually received by Landlord from the Premises after termination. Landlord shall have an affirmative obligation to attempt to mitigate its damages following termination, until the time of the award payment.

(C) The “worth at the time of the award payment” of the amount by which the Base Rent and all other charges which would have accrued after the time of the award payment for the remaining term of this Lease exceeds the Fair Market Rent (“FMR”), determined in the manner set forth below, for the remaining term of this Lease. The FMR, as used in this Lease, shall be the fair market rent of the Premises, net of market brokerage commissions and consulting fees, as of the time of the award for a term equal to the remaining term of this Lease subsequent to the time of the award payment (assuming this Lease had not been terminated) on an “as is” basis, as determined by a licensed MAI appraiser selected by Landlord who has a minimum of 10 years of experience in the appraisal of institutional quality multi-family apartment projects in the Denver metropolitan area. At Tenant’s option, Tenant may select an additional licensed MAI appraiser (meeting the same experience criteria as set forth above for Landlord’s appraiser) to estimate FMR and Tenant’s appraiser and Landlord’s appraiser shall select a third MAI appraiser (also meeting the experience criteria as set forth above for Landlord’s appraiser) to estimate the FMR, in which case the FMR shall be the median of the three FMR valuations. Tenant shall bear the cost of the FMR valuation process.

As used in this Section 13.2, the term, “**worth at the time of the award payment**”, shall be computed by allowing simple interest at an accrual rate equal to the Default Rate for past due obligations, and a discount rate to net present value at the time of the award payment of five percent (5%) per annum on anticipated future obligations or revenues, and mitigation amounts, with no interest or discount, on the amount of the obligations payable on the date of such calculation. In the event this Lease shall be terminated as provided above, by summary proceedings or otherwise, Landlord, its agents, servants or representatives may immediately or at any time thereafter peaceably re-enter and take possession of the Premises

13.3 Reimbursement of Landlord's Costs in Exercising Remedies. Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, as Additional Rent, such reasonable and actual and documented out-of pocket expenses as Landlord may incur in recovering possession of the Premises, placing the same in good order and condition and repairing the same for reletting, and all other reasonable and actual and documented out-of pocket expenses, commissions and charges incurred by Landlord in exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including without limitation reasonable attorneys' fees), provided that in no event shall Tenant be obligated to compensate Landlord for any speculative or consequential damages caused by Tenant's failure to perform its obligations under this Lease.

- 13.4. Remedies Are Cumulative. The various rights and remedies reserved to Landlord herein are cumulative, and Landlord may pursue any and all such rights and remedies, in addition to any other rights or remedies available at law or in equity, whether at the same time or otherwise (to the extent not inconsistent with specific provisions of this Lease). Notwithstanding anything herein to the contrary, Landlord expressly waives its right to forcibly dispossess Tenant from the Premises, whether peaceably or otherwise, without judicial process, such that Landlord shall not be entitled to any "commercial lockout" or any other provisions of applicable law which permit landlords to dispossess tenants from commercial properties without the benefit of judicial review.
- 13.5 Mitigation of Damages. In the event Landlord elects to terminate the Lease and seek damages from Tenant as provided herein, Landlord will use reasonable efforts to mitigate its damages. Landlord shall have the option but not the obligation to list the Premises for lease with a real estate broker. In the event Landlord elects not to so list the property but instead elects to itself market the property for lease, such election shall not be deemed to constitute a failure by Landlord to mitigate. Landlord will not be obligated to (i) accept less than the then current market rent for the Premises; (ii) deviate from its then established guidelines for tenants including without limitation use, experience, reputation, and creditworthiness; (iii) lease less than all of the Premises; (iv) extend the Term of this Lease; or (v) expend any money on behalf of a new tenant. Tenant will not have any independent, affirmative claim against Landlord on account of Landlord's failure to mitigate its damages; however, such failure to mitigate may be asserted by Tenant as a defense to a claim by Landlord to the extent allowed by law.
- 13.6 Waiver of Landlord's Lien. Landlord hereby waives any statutory liens and any rights of distress with respect to the Tenant's Property (as defined below) from time to time located on the Premises. This Lease does not grant a contractual lien or any other security interest to Landlord or in favor of Landlord with respect to Tenant's Property. Landlord further agrees, without cost to Tenant, to execute and deliver such instruments reasonably requested by Tenant from time to time to evidence the aforesaid waiver of Landlord. As used herein the term "Tenant's Property" shall mean all business and trade fixtures, machinery and equipment, automobiles, computers, furniture, satellite dish(s), signage, communications equipment and office equipment, and all furniture, furnishings and other articles of personal property owned by Tenant and located in the Premises.
- 13.7 Landlord Events of Default. Each of the following events or conditions shall constitute a "Landlord Event of Default" hereunder: (a) any payment by Landlord required hereunder is not paid when due and such failure continues for thirty (30) days following written notice thereof; (b) any failure by Landlord to perform any of its material duties or obligations contemplated by this Lease and such failure continues for a period of thirty (30) days following written notice thereof from Tenant to Landlord; provided, however, that if such failure cannot reasonably be cured within said thirty (30) day period and Landlord shall have

commenced to cure such failure within said period and shall thereafter proceed with reasonable diligence and good faith to cure such failure, such thirty (30) day period shall be extended for such longer period as shall be necessary for Landlord to cure the same with all reasonable diligence; or (c) any filing with a bankruptcy court of a voluntary or involuntary petition of bankruptcy by or against Landlord and such petition is not vacated within sixty (60) days, or a receiver or trustee is appointed for Landlord and such appointment is not vacated with sixty (60) days, or Landlord makes an assignment for the benefit of its creditors, except as provided in this Lease.

13.8 Tenant Remedies for Landlord Event of Default. Upon the occurrence of a Landlord Event of Default under this Article 13 and subject to any limitations set forth in any consent and agreement executed with a Leasehold Mortgagee, Tenant may exercise all remedies available at law or at equity or other appropriate proceedings, including bringing an action or actions from time to time for recovery of damages which may include, without limitation, all amounts due and unpaid to Tenant by Landlord, and all costs and expenses reasonably incurred in the exercise of its remedies hereunder (including reasonable attorneys' fees), and/or specific performance.

13.9 Attorneys' Fees In the event that either Landlord or Tenant commences any suit for the collection of any amounts for which the other may be in default or for the performance of any other covenant or agreement hereunder, the prevailing party in any such action shall be awarded its costs and expenses, including, but not limited to, all reasonable attorneys' fees and expenses incurred in enforcing such obligations and/or collecting such amounts, from the other party to such action.

13.10 Waiver of Consequential Damages. In no event shall either Landlord or Tenant have the right to recover consequential damages of any kind from the other. Except as limited hereinabove, all rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord or Tenant shall deem necessary.

14 Covenant of Quiet Enjoyment

Landlord agrees that Tenant shall quietly and peaceably hold, possess, and enjoy the Premises, without any hindrance or molestation by the agents or employees of Landlord, and further, Landlord shall defend the title to the Premises and the use and occupancy of the same by Tenant against the lawful claims of all persons whosoever, except those claiming by or through Tenant.

15 Landlord's Right to Mortgage/Transfers by Landlord

15.1 Landlord's Right to Mortgage Fee. Landlord may mortgage its fee interest in the Premises ("Fee Mortgage"), provided such mortgage expressly provides that the rights and interests of the mortgagee thereunder are subordinate and subject to the rights and interests of Tenant hereunder and the rights of any Leasehold Mortgagee under any Leasehold Mortgage then or thereafter existing. This Lease and any new lease made pursuant to Section 19.9 and any Leasehold Mortgage and all renewals,

modifications, extensions or replacements of any of the foregoing shall be senior and superior to (i) the lien of any Fee Mortgage, or (ii) any encumbrances, now or hereafter made or affecting all or any part of the fee title to the Premises, as the same may be modified, extended, consolidated or renewed from time to time.

- 15.2 Transfers by Landlord. No transfer or sale of Landlord's interest hereunder shall release Landlord from any of its obligations or duties hereunder prior to the effective date of such transfer or sale. Landlord shall be released of any ongoing obligations hereunder only from and after the date of such transfer or sale provided such transferee, expressly assumes, in writing, the obligations of Landlord under this Lease. Should Landlord sell, convey, or transfer its interest in the Premises or should any Fee Mortgagee of Landlord succeed to Landlord's interest through foreclosure or deed in lieu, Tenant shall attorn to such succeeding party as its landlord under this Lease promptly upon any such succession, provided such succeeding party expressly assumes all of Landlord's duties and obligations under this Lease. Such succeeding party shall not be liable for any of Landlord's obligations and duties hereunder prior to its assumption of Landlord's duties and obligations hereunder. Notwithstanding anything contained herein to the contrary, (i) Landlord's right to transfer or sale of Landlord's interest under this Lease is expressly subject to the Tenant's Right of First Refusal as set forth in Article 16 below; and (ii) in no event shall Landlord have the right to transfer, in any manner whatsoever, or to sell its interest hereunder prior to delivery of possession of the Premises to Tenant.

16 Right of First Refusal.

Provided there is no continuing and uncured Event of Default by Tenant in existence under this Lease beyond the applicable notice and cure period, Tenant shall have a right of first refusal ("**Right of First Refusal**") to purchase Landlord's interest in the Premises on the following terms and conditions: If at any time during the Term, Landlord shall have received a bona fide arm's length offer to purchase the Premises from a third party which is acceptable to Landlord ("**Offer**"), Landlord shall promptly send a notice of such Offer to Tenant. Such notice shall set forth the exact terms and conditions of the Offer so received together with a copy of the Offer, and shall state the desire of Landlord to sell the Premises on such terms and conditions. Thereafter, for a period of ninety (90) days (the "**Acceptance Period**"), Tenant shall have the right and option to purchase the entire Premises on the terms and conditions set forth in the Offer. If Tenant elects to purchase the Premises on the terms and conditions set forth in the Offer, Tenant shall provide Landlord with written notice of such election within the Acceptance Period. If Tenant fails to notify Landlord of its election to purchase the Premises within such ninety (90) day period, Landlord may sell the Premises to the proposed transferee on the terms and conditions set forth in the Offer; provided however, if, for any reason, the Premises are not sold in accordance with the terms and conditions of the Offer, so long as there is no continuing and uncured default by Tenant in existence under this Lease beyond the applicable notice and cure period Tenant shall have a continuing Right of First Refusal to purchase the Premises as provided herein.

17. Surrender of Premises

Upon termination of the Lease, whether by expiration of the Initial Term and any Extension Term or otherwise, Landlord shall have the option (a) to take possession of part or all of the Improvements then situated on the Premises and retain ownership of such Improvements free and clear of any claim of Tenant, or (b) to require the Tenant, at its sole cost and expense, to raze and remove all or any portion of the Improvements, and in either case to fill and grade the Premises to the condition as existed on the Commencement Date, or seed such portion of the Premises as designated by Landlord. Landlord shall exercise its option by written notice to Tenant. Tenant shall have until the later of the termination of the Lease or one hundred eighty (180) days following such notice to raze and remove any or all of the Improvements designated in Landlord's notice and to fill and grade the Premises or seed the portion designated by Landlord, and in the event such one hundred eighty (180) day period extends beyond the termination of the Lease, Landlord shall permit the Tenant to retain possession of the Premises during such one hundred eighty (180) day period, without any additional compensation to Landlord, for the sole purpose of completing such work.

18 Miscellaneous

- 18.1 Non-Waiver of Default. No acquiescence by either party to any default by the other party shall operate as a waiver of its rights with respect to any other breach or default, whether of the same or any other covenant or condition.
- 18.2 Recording. This Lease shall not be recorded. The parties shall execute, acknowledge, and deliver to each other duplicate originals of a short form or memorandum of this Lease ("**Memorandum of Lease**") in substantially the form of Exhibit C attached hereto and incorporated herein, describing the Premises and setting forth the Term of this Lease. Upon request of either party, the parties shall acknowledge and deliver to each other duplicate originals of an amendment to Memorandum of Lease confirming the Commencement Date and expiration date of the Initial Term, and thereafter if any Extension Option is exercised, an additional amendment or amendments, stating the commencement and end of each applicable Extension Term. The Memorandum of Lease and amendment to Memorandum of Lease, if applicable, shall be recorded at Tenant's expense. In the event Tenant records this Lease, this Lease shall automatically be deemed terminated and of no further force or effect. Upon the expiration or earlier termination of this Lease, upon written request of Landlord, Tenant will execute and deliver to Landlord a termination of the Memorandum of Lease suitable for recording.
- 18.3 Notice. Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to Tenant: SOLANA LUCENT STATION LLC
C/o ReyLenn Properties LLC
444 S. Cedros Suite 180
Solana Beach, CA 92075
Attention: Ric Shwisberg and Christy Dutchman

With copies to: SOLANA LUCENT STATION LLC
C/o ReyLenn Properties LLC
7310 S. Alton Way, Unit 6 D
Centennial, CO 80112
Attention: Jason Smith

If to Landlord: Englewood/McLellan Reservoir Foundation
1000 Englewood Parkway
Englewood, Colorado 80110
Attention: President

With copies to: City of Englewood
1000 Englewood Parkway
Englewood, Colorado 80110
Attention: City Attorney

or at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

- 18.4 Successors and Assigns. All covenants, promises, conditions, representations, and agreements herein contained shall be binding upon, apply to, and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors (including subtenants), and permitted assigns.
- 18.5 Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
- 18.6 Interpretation. In interpreting this Lease in its entirety, any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either party hereto. This Lease shall be construed without regard to any presumption or other rule requiring construction against the Parties causing this Lease to be drafted.

- 18.7 Headings, Captions, and References. The section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof," "hereunder," and "herein" shall refer to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The terms "include," "includes," and "including" incorporate the meaning "without limitation." The use of the masculine or neuter genders herein shall include the masculine, feminine, and neuter genders and the singular form shall include the plural when the context so requires.
- 18.8 Governing Law. This Lease shall be construed under the laws of the State of Colorado.
- 18.9 Execution of Documents. Landlord and Tenant shall each cooperate with the other and execute such documents as the other party may reasonably require or request so as to enable it to conduct its operations, so long as the requested conduct or execution of documents does not derogate or alter the powers, rights, duties, and responsibilities of the respective Parties.
- 18.10 Force Majeure. Whenever a party is required to perform an act under this Lease by a certain time, unless specifically provided otherwise in this Lease, such party may extend the deadline in the event of Excusable Delay. In the event a party elects to so extend a deadline, such party shall first give written notice to the other party within twenty (20) days following the commencement of the Excusable Delay setting forth the event giving rise to the Excusable Delay. The party electing to extend the deadline shall within twenty (20) days following the end of the Excusable Delay give an additional written notice to the other party setting forth the number of days the period has been extended as a result of the Excusable Delay and the details of such delay.
- 18.11 Reasonable Consent. Unless specifically provided to the contrary, in all cases where consent or approval shall be required pursuant to this Lease, the giving of each consent or approval shall not be unreasonably withheld, conditioned or delayed by the party from whom such consent is required or requested.
- 18.12 Authority. No agreement, including but not limited to an agreement to amend or modify this Lease or to accept surrender of the Premises, shall be deemed binding upon either party, unless in writing and signed by an officer or other authorized representative of the party against whom the agreement is to be enforced or by a person designated in writing by such party as so authorized to act. In addition if this Lease is subject to any Leasehold Mortgage, the prior written consent of any such Leasehold Mortgagee shall also be required.
- 18.13 Payment of Rent. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord and satisfaction unless expressly agreed to by Landlord acting thru its authorized representative, and Landlord may accept such check or payment without prejudice

to Landlord's right to recover the balance of such Rent or pursue any other remedy then available to Landlord.

18.14 Estoppel Certificates.

18.14.1 Tenant's Certificate. Within fourteen (14) days following receipt of any written request which Landlord may make from time to time, Tenant shall execute, acknowledge and deliver to Landlord a written statement, certifying to any Leasehold Mortgagee, encumbrancer or prospective purchaser the matters set forth therein and such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section 18.4 may be relied upon by any such purchaser or prospective purchaser, encumbrancer, or Mortgagee. Tenant's failure to deliver such statement to Landlord within such fourteen (14) day period shall be conclusive upon Tenant that (i) the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been canceled or terminated and is in full force and effect, except as otherwise represented by Landlord; (iii) that the current amount of the Rent is as provided in the Lease; (iv) that there have been no assignments of the Lease; (v) that not more than one month's Rent or other charges have been paid in advance; and (vi) that to the best of Tenant's knowledge Landlord is not in default under the Lease.

18.14.2 Landlord's Certificate. Landlord shall, at any time and from time to time, within fourteen (14) days following written request by Tenant, execute, acknowledge and deliver to Tenant and any Leasehold Mortgagee, a statement in writing prepared by Tenant and edited by Landlord, as appropriate, certifying that (i) this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (ii) the dates to which Tenant has paid Rent, adjustments to Rent, and other charges in advance; (iii) whether or not to the best knowledge of Landlord, Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Landlord may have knowledge; or (iv) containing any other information or certifications which reasonably may be requested by Tenant or any Leasehold Mortgagee, any proposed assignee or sublessee of Tenant, or any person or entity to which Tenant reasonably requests such information be provided. Any such statement, delivered pursuant to this subsection, may be relied upon by Tenant, any proposed assignee or sublessee or any proposed lender (including any Leasehold Mortgagee) of Tenant. Landlord's failure to deliver any such statement within the fourteen (14) day period set forth above shall be deemed to establish conclusively that this Lease is in full force and effect and has not been modified except as may be represented by Tenant. In the event that any

Leasehold Mortgagee requests that Landlord execute such a statement, Tenant shall pay Landlord's reasonable attorneys' fees and costs incurred in connection therewith.

18.15 Holding Over. Should Tenant hold over, without Landlord's consent, after the Lease term has expired and continue to pay Rent, Tenant shall become a month to month tenant only. In no event shall such hold over constitute an extension of the term of this Lease. During such hold over, the Rent shall be an amount equal to one hundred fifty percent (150%) of the Rent during the last month of the term of the Lease, together with all other amounts payable by Tenant under the terms of the Lease. None of the terms of this Section or the holding over by Tenant shall constitute a waiver of any rights of Landlord to terminate the Lease at any time and to re-enter and take possession of the Premises. Tenant shall indemnify and hold harmless Landlord against all damages incurred by Landlord resulting from any delay by Tenant in surrendering possession of the Premises.

19 Leasehold Financing

19.1 Definitions: For purposes of this Article 19, the term "**Tenant**" shall mean and include each of the following: (i) the Tenant under this Lease; (ii) an assignee, transferee or subtenant of the Tenant under this Lease who is or becomes directly and primarily liable to Landlord; and (iii) any further assignee, transferee or subtenant of any of the parties listed in (ii) who is or becomes directly and primarily liable to Landlord. "**Leasehold Mortgage**" means and includes a mortgage, a deed of trust or other security instrument by which Tenant's leasehold estate or any portion thereof is mortgaged, conveyed, assigned, or otherwise transferred to secure a debt or other obligation. The holder or holders of any such Leasehold Mortgage shall be referred to herein as a "**Leasehold Mortgagee**." The Leasehold Mortgagee's interest in the Premises and this Lease shall be subordinate, junior and subject to Landlord's ownership of the Premises and interest in this Lease.

19.2 Encumbrance of Leasehold Estate by Tenant. Tenant may, from time to time during the Term, without Landlord's prior consent, but following written notice to Landlord, hypothecate, encumber, mortgage, pledge, or alienate the Improvements to be constructed by Tenant on the Premises and/or Tenant's leasehold estate and rights hereunder; provided however, (i) that no Leasehold Mortgage incurred by Tenant pursuant to this Article shall, and Tenant shall not have power to incur any encumbrance that will, constitute in any way a lien or encumbrance on Landlord's fee interest in the Premises; and (ii) the Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the terms, covenants, conditions and restrictions stated in this Lease and to all of the rights and interests of Landlord, except as otherwise provided in this Lease.

19.3 Notices to Landlord. Notices to Landlord regarding Leasehold Mortgages shall be given as follows:

- 19.3.1 If Tenant shall, on one or more occasions, mortgage its leasehold estate, the holder of such Leasehold Mortgage shall provide Landlord with notice of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Section 19.3 shall apply with regard to each such Leasehold Mortgage.
- 19.3.2 In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgagee, notice of the name and address of such new Leasehold Mortgagee or assignee shall be promptly provided to Landlord and in no event later than sixty (60) days following such assignment.
- 19.4 Cancellation or Modification of Lease. No cancellation, surrender, modification or termination of this Lease shall be effective as to any Leasehold Mortgagee unless either consented to in writing by such Leasehold Mortgagee or done in accordance with the provisions of this Article 19.
- 19.5 Enforcement of Leasehold Mortgage. A Leasehold Mortgagee or its assigns may enforce such Leasehold Mortgage and acquire title to the leasehold estate in any lawful way and, pending foreclosure of such lien, the Leasehold Mortgagee may take possession of and operate the Premises, performing all obligations performable by Tenant, and upon foreclosure of such lien by power of sale, judicial foreclosure, or acquisition of the leasehold estate by deed in lieu of foreclosure, the Leasehold Mortgagee may sell and assign the leasehold estate hereby created. Notwithstanding anything herein contained to the contrary, the Leasehold Mortgagee or any person or entity acquiring such leasehold estate shall be liable to perform the obligations imposed on Tenant by this Lease only during the period such person has ownership of said leasehold estate or possession of the Premises; provided further that, except as expressly provided herein, in no event shall Landlord's rights be impaired to exercise its remedies following an Event of Default prior to Leasehold Mortgagee's possession or ownership. Landlord agrees to provide an estoppel certificate to any Leasehold Mortgagee upon written request therefor, stating that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which Tenant has paid Rent, adjustments to Rent, and other charges in advance, if any, stating whether or not to the best knowledge of Landlord, Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Landlord may have knowledge.
- 19.6 Notice To and Rights of Leasehold Mortgagees. When giving notice to Tenant with respect to any Event of Default or termination of this Lease, Landlord shall serve a copy of such notice upon any Leasehold Mortgagee who shall have given Landlord a written notice specifying its name and address. No such notice shall be effective against any Leasehold Mortgagee unless and until served on such Leasehold Mortgagee as herein provided. Upon the occurrence of an Event of Default by Tenant in the performance of any of the terms, covenants, agreements,

and conditions of this Lease to be performed on Tenant's part, any Leasehold Mortgagee shall have the right, within the grace period available to Tenant for curing such Event of Default plus, in each case, the additional periods of time specified in Sections 19.7 and 19.8, as applicable, granted to any Leasehold Mortgagee herein, to cure or make good, such Event of Default or to cause the same to be cured or made good, whether the same consists of the failure to pay Rent or the failure to perform any other obligation. Landlord shall accept such performances on the part of any Leasehold Mortgagee as though the same had been done or performed by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Premises by any Leasehold Mortgagee for such purpose.

19.7 Limitation on Landlord's Termination Rights. Anything contained in this Lease to the contrary notwithstanding, if any Event of Default occurs which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such Event of Default (or the act or omission which gave rise to such default), Landlord shall notify each and every Leasehold Mortgagee of Landlord's intent to so terminate at least thirty (30) days in advance of the proposed effective date of such termination, if such Event of Default is capable of being cured by the payment of money, and at least forty-five (45) days in advance of the proposed effective date of such termination, if such Event of Default is not capable of being cured by the payment of money. The provisions of this Section 19.7 shall apply if, during such thirty (30) or forty-five (45) day period, any Leasehold Mortgagee shall:

19.7.1 notify Landlord of such Leasehold Mortgagee's desire to nullify such notice; and

19.7.2 pay or cause to be paid all Rent and other payments then due and in arrears as specified under notice to such Leasehold Mortgagee and which may become due during such thirty (30) or forty-five (45) day period; and

19.7.3 comply or in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee.

19.8 Default Procedure. The following procedure shall be followed upon the occurrence of an Event of Default:

19.8.1 If Landlord shall elect to terminate this Lease by reason of any Event of Default of Tenant, and a Leasehold Mortgagee shall have furnished Landlord notice in the manner provided for by Section 19.7, the specified date for the termination of this Lease as fixed by Landlord in its notice of termination shall be extended for a period of six (6) months, provided that such Leasehold Mortgagee shall, during such six (6) month period:

- 19.8.1.1 pay or cause to be paid the Rent and all other monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting past nonmonetary obligations then in default and not reasonably susceptible of being cured by Leasehold Mortgagee; and
- 19.8.1.2 if not enjoined or stayed, commence proceedings to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence. The time available to a Leasehold Mortgagee to initiate foreclosure proceedings as aforesaid shall be deemed extended by the number of days of delay of occasioned by judicial restriction against such initiation.
- 19.8.2 If at the end of six (6) month period such Leasehold Mortgagee is complying with Subsection 19.8.1.1, this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed in a judicial proceeding and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 19.8, however, shall be construed to extend this Lease beyond the Term hereof nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If the Event of Default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.
- 19.8.3 If a Leasehold Mortgagee is complying with Subsections 19.8.1.1 and 19.8.1.2, upon the acquisition of Tenant's estate herein or any portion thereof by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale, or otherwise, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.
- 19.8.4 For the purposes of this Section 19 the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder, but the purchaser, including the Leasehold Mortgagee if applicable, at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage

shall be deemed to be an assignee or transferee and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

19.8.5 Any Leasehold Mortgagee or other acquirer of the leasehold estate of Tenant pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring Tenant's leasehold estate, without further consent of Landlord (but following prior written notice to Landlord), sell and assign the leasehold estate or portion thereof on such terms and to such persons and organizations as are acceptable to such mortgagee or acquirer and thereafter be relieved of all obligations under this Lease; provided that such purchaser or assignee has, concurrent with such purchase or assignment, delivered to Landlord its written agreement to be thereafter bound by all of the provisions of this Lease.

19.8.6 Notwithstanding any other provisions of this Lease, any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the leasehold estate hereby created.

19.9 Leasehold Mortgagee's Right to New Lease. In case of the termination of this Lease by reason of any Event of Default or in the event of rejection or disaffirmance of this Lease pursuant to bankruptcy law or any other law affecting creditor's rights, Landlord shall give prompt notice thereof to any Leasehold Mortgagees whose name and address for notice has been given to Landlord. Landlord shall, following receipt of written request of any such Leasehold Mortgagee or designee, made at any time within sixty (60) days after the giving of such notice by Landlord, enter into a new lease of the Premises with such Leasehold Mortgagee, or its designee, within thirty (30) days after receipt of such request, which new lease shall be effective as of the date of such termination of this Lease for the remainder of the term of this Lease, at the Rent provided for herein, and upon the exact same terms, covenants, conditions and agreements as are herein contained; provided that such Leasehold Mortgagee(s) shall: (a) contemporaneously with the delivery of such request, pay to Landlord all the installments of Rent and other charges payable by Tenant hereunder which are delinquent or then due, whether or not Landlord has specified them as due in any notice to such Leasehold Mortgagee given as provided in this paragraph; (b) pay to Landlord at the time of the execution and delivery of said new lease any and all sums for Rent and other charges payable by Tenant hereunder to and including the date thereof, together with all actual and documented out of pocket expenses, including reasonable attorneys' fees, incurred by Landlord in connection with the termination of this Lease and with the preparation, execution and delivery of such new lease, less the net amount (if any) of all sums received by Landlord from any

Subtenants/residents in occupancy of any part of parts of the Improvements on the Real Property or any part thereof up to the date of commencement of such new lease; and (c) on or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, such Leasehold Mortgagee or its designee will perform or cause to be performed all of the other covenants and agreements herein contained on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of such new lease, except such covenants and agreements which are not susceptible of performance by such Leasehold Mortgagee.

- 19.10 Priority of New Leases. Any new lease made pursuant to Section 19.9 and any renewal lease entered into with a Leasehold Mortgagee shall be prior to any mortgage or other lien, charge or encumbrance on the fee of the Premises and the Tenant under such new lease shall have the same right, title and interest in and to the Premises and the Improvements thereon as Tenant had under this Lease. The provisions of this Section 19.10 and Section 19.9 shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if Sections 19.9 and 19.10 were a separate and independent contract made by Landlord, Tenant and such Leasehold Mortgagee and, from the effective date of such termination, rejection or disaffirmance of this Lease to the date of execution and delivery of such new lease, such Leasehold Mortgagee may use and enjoy said Real Property without hindrance by Landlord or any person claiming by, through or under Landlord.
- 19.11 Liabilities of New Tenant. The new Tenant shall be liable to perform all of the obligations imposed on the Tenant by such new lease only during the period such person has ownership of such leasehold estate.
- 19.12 Protection of Landlord's Estate. Despite anything in this Lease to the contrary, the foregoing provisions do not give to any person whatsoever the right to mortgage, hypothecate or otherwise to encumber or to cause any liens to be placed against the fee interest of Landlord.
- 19.13 Incurable Defaults. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition of the exercise of any rights hereunder or in order to comply with the provisions of Section 19.7 or 19.8 or as a condition of entering into the new lease provided for by Section 19.9 to cure any nonmonetary default of Tenant not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.
- 19.14 Condemnation Awards. Tenant's share of the proceeds arising from an exercise of the power of eminent domain as provided for herein shall, subject to the provisions of this Lease, be disposed of as provided for by any Leasehold Mortgage.
- 19.15 Mortgagee Clauses. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and each Leasehold Mortgage shall so provide,

except that such Leasehold Mortgage may provide in a manner for the disposition of such proceeds, if any, otherwise payable directly to Tenant (but not such proceeds, if any, payable jointly to Landlord and Tenant) pursuant to the provisions of this Lease.

- 19.16 Proceedings. Landlord shall give each Leasehold Mortgagee whose name and address for notice has been given to Landlord, prompt notice of any arbitration or legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of such notice or arbitration or proceedings.
- 19.17 Notice by Landlord. Notices from Landlord to any Leasehold Mortgagee shall be mailed to the address furnished Landlord pursuant to Section 19.6, and those from any Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 18.3 hereof. Such notices, demands and requests shall be given in the manner described in Section 18.3.8 and shall in all respects be governed by the provisions of that Section.
- 19.18 No Waiver. No payment made to Landlord by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and a Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided it shall have made demand therefor not later than sixty (60) days after the date of its payment.
- 19.19 No Merger. There shall be no merger of this Lease, nor of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease or the leasehold estate created by this Lease or any interest in this Lease or said leasehold estate may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate in the Premises or any interest in such fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including Leasehold Mortgagees) having an interest in this Lease or in the estate of Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.
- 19.20 Liens. On the Commencement Date, the Premises shall be free and clear of all mortgage liens other than those expressly agreed to (if any) in accordance with this Lease. Thereafter, any mortgage placed on the Premises by Landlord, or permitted to be placed or remain thereon by Landlord, shall be subject to this Lease, any mortgage then in existence on the leasehold estate as permitted by this Lease, Tenant's right as permitted by this Lease subsequently to encumber the leasehold

estate, and any and all documents executed or to be executed by Landlord in connection with the development of the Premises or any portion thereof.

19.21 Amendments Required by Leasehold Mortgagees. Upon the reasonable request of any Leasehold Mortgagee, Landlord and Tenant shall cooperate in including in this Lease by suitable amendment or separate agreement from time to time any provision for the purpose of implementing the protective provisions contained in this Lease for the benefit of such Leasehold Mortgagee in allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of its proposed Leasehold Mortgage upon the occurrence of an Event of Default under the terms of the Lease. Landlord and Tenant shall execute, deliver, and acknowledge any amendment or separate agreement reasonably necessary to effect any such requirement; provided, however, that any such amendment or separate agreement shall not in any way affect the Term or rental under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

19.22 Fees and Costs. Tenant agrees to reimburse Landlord for its reasonable, actual and documented, attorneys' fees and costs incurred in connection with Landlord's review and/or approval of any documentation which may be required in connection with any Leasehold Mortgage by Tenant as provided herein.

19.23 Benefits. The provisions of this Article 19 are for the benefit of any Leasehold Mortgagee and may be relied upon and shall be enforceable by any Leasehold Mortgagee. No Leasehold Mortgagee shall be liable upon the covenants, agreements or obligations of Tenant contained in this Lease, except as expressly provided herein.

20 Representations of Landlord and Tenant

20.1 Representations of Landlord. Landlord represents and warrants to Tenant that, as of the Effective Date:

20.1.1 Landlord is a non-profit corporation validly organized and existing under the laws of the State of Colorado. Landlord has the full right, power and authority to enter into this Agreement and to perform Landlord's obligations hereunder.

20.1.2 This Agreement (i) has been duly authorized, executed, and delivered by Landlord; and (ii) is the binding obligation of Landlord;

20.1.3 Landlord has not granted, other than to Tenant, any outstanding option, right of first refusal or any preemptive right with respect to the purchase of all or any portion of the Premises.

20.1.4 To the best of Landlord's knowledge, the Premises and use and occupancy thereof is not in violation of any laws and no written notice of such violation has been received by Landlord and is not the subject of any existing, pending, or threatened investigation or inquiry by any governmental authority or subject to any remedial obligations under any

laws pertaining to or relating to hazardous materials or other environmental conditions.

20.1.5 No lawsuit has been filed or threatened against Landlord regarding the Premises.

20.1.6 There are no other leases, agreements or contracts in existence relating to the Premises, including, without limitation, tenant leases, service contracts, or management agreements.

20.1.7 There are no oral agreements affecting the Premises.

20.1.8 There is no litigation pending with respect to the Premises relating to any Environmental Law violations. Except as disclosed in writing by Landlord or disclosed in environmental reports delivered to Tenant, Landlord has no actual knowledge of an Environmental Law violation and has received no notice or other written communication from a governmental agency or any other person or entity alleging or suggesting an Environmental Law violation on the Premises. The term "**Environmental Law**," as used in this Agreement, shall include: (1) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.A. §9601, et seq. ("**CERCLA**"); (2) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C.A. §6901, et seq.; (3) Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C.A. §1251, et seq.; (4) Toxic Substances Control Act of 1976, as amended, 15 U.S.C.A. §2601, et seq.; (5) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §11001, et seq.; (6) Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C.A. §7401, et seq.; (7) National Environmental Policy Act of 1970, as amended, 42 U.S.C.A. §4321, et seq.; (8) Rivers and Harbors Act of 1899, as amended, 33 U.S.C.A. §401, et seq.; (9) Endangered Species Act of 1973, as amended, 16 U.S.C.A. §1531, et seq.; (10) Occupational Safety and Health Act of 1970, as amended, 29 U.S.C.A. §651, et seq.; (11) Safe Drinking Water Act of 1974, as amended, 42 U.S.C.A. §300(f), et seq.; and (12) all applicable standards, rules, policies and other governmental requirements.

20.1.9 Landlord owns the Premises free and clear of any mortgage or deed of trust.

20.2 Representations of Tenant. Tenant represents, warrants and covenants to Landlord that:

20.2.1 Tenant's Authority. Tenant is a duly constituted limited liability company organized under the laws of the State of Delaware, it has the power to

enter into this Lease and perform Tenant's obligations hereunder; and the person executing this Lease on Tenant's behalf has the right and lawful authority to do so.

20.2.2 Tenant's Covenant as to Hazardous or Toxic Substances.

20.2.2.1 Except for those substances and materials which are typically used in connection with the construction and operation of multifamily residential developments (such as paints, solvents and other similar materials) or substances typically used in multifamily residential dwellings such as household cleaners and paints (which materials shall be permitted on the Premises and which at all times shall be used, stored, transported and disposed in accordance with all applicable laws), Tenant hereby covenants that Tenant shall not cause or permit any "**Hazardous Substances**" (as hereinafter defined) to be placed, held, located or disposed of in, on or at the Premises or any part thereof except in accordance with all applicable laws, statutes, ordinances, and regulations.

20.2.2.2 Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person or entity or governmental agency as a result of the escape, seepage, leakage, spillage, discharge, emission, discharging or release from, the Premises of any Hazardous Substance, provided, however, that the foregoing indemnity is limited to matters arising solely from Tenant's violation of the covenant contained in the subsection 20.2.2.1.

20.2.2.3 For purposes of this Lease, "**Hazardous Substances**" shall mean and include those elements or compounds which are contained in the list of hazardous substances now or hereafter adopted by the United States Environmental Protection Agency (the "EPA") or the list of toxic pollutants designated by Congress or the EPA or which are now or hereafter defined as hazardous, toxic, pollutants, infectious or radioactive by any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect. "Hazardous Substances," for the purposes of this Lease, shall include petroleum products, asbestos, and polychlorinated biphenyls, and underground storage tanks unless installed, maintained, and closed in compliance with all applicable laws.

20.2.2.4 In the event Hazardous Substances are present on the Premises in violation of Tenant's covenant in subsection 20.2.2.1, and Tenant fails to clean up, remove, resolve, minimize the impact of, or otherwise remediate such contamination in compliance with all applicable laws and regulations and to obtain a "no further action" or similar closure letter from the governmental authorities with jurisdiction over such Hazardous Substances permitting the development and use of the Premises as contemplated herein without further remediation (collectively, "**Remediate**," which term shall include obtaining such approvals as are required from applicable governmental authorities prior to the commencement of Remediation activities on the Premises), then Landlord shall have the right, but not the obligation, thirty (30) days after notice to Tenant and Tenant's failure to Remediate, or, if Tenant cannot Remediate within thirty (30) days, then upon Tenant's failure to commence preparation of a plan to Remediate within such thirty (30) day period and diligently pursue the approval of such plan and the completion of the remediation work authorized by the approved plan to completion, to enter upon the Premises to Remediate such contamination. Tenant agrees to commence preparation of such plan promptly upon receipt of notice that such Hazardous Substances are present, to apply for approval of such plan promptly, and to pursue such approval diligently. All reasonable and actual and documented costs and expenses incurred by Landlord in the exercise of any such rights which result from Tenant's violation of the covenants contained herein, shall be deemed additional Rent under this Lease and shall be payable by Tenant within thirty (30) days of written demand which demand shall be supported by appropriate back-up documentation .

20.3 **Broker.** Landlord and Tenant acknowledge that Richard Liedy and Richard Dean, (collectively "Broker") have acted as Broker for Tenant in connection with the transaction contemplated by this Lease and Tenant agrees to pay Broker any and all compensation due it as a result of this transaction pursuant to a separate written agreement to be entered into between Tenant and Broker. Notwithstanding the foregoing, Landlord acknowledges that Tenant shall be entitled to the Base Rent Credit for a portion of the compensation paid to Broker as more specifically provided in Section 5.7 above. Except for Broker, each party hereby indemnifies and agrees to hold the other party harmless from all damages, claims, liabilities or expenses, including reasonable and actual attorneys' fees (through all levels of proceedings), resulting from any claims that may be asserted against the other party by any real estate broker or finder with whom the indemnifying party either has or is purported to have dealt.

Signatures Appear on the Following Page

IN WITNESS WHEREOF, this Lease has been executed as of the date written above.

LANDLORD:

**ENGLEWOOD/MCLELLAN RESEVOIR
FOUNDATION**, a Colorado non-profit
corporation

By: _____
Name: _____
Title: _____

TENANT:

SOLANA LUCENT STATION LLC,
a Delaware limited liability company

By: Solana Lucent Holdings LLC,
a Delaware limited liability company,
its Manager

By: RP Solana Lucent Station Investors
LLC, a Delaware limited liability
company, its Manager

By: ReyLenn Properties LLC,
a California limited liability company,
its Manager

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

Lot 2, Highlands Ranch Filing No. 157, according to the Plat thereof recorded November 19, 2015 at Reception No. 2015083463, County of Douglas, State of Colorado.

EXHIBIT B

SITE PLAN OF PREMISES

SEE ATTACHED

EXHIBIT C

MEMORANDUM OF LEASE

SEE ATTACHED

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into between **ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION**, a Colorado nonprofit corporation ("**Landlord**"), and **SOLANA LUCENT STATION LLC**, a Delaware limited liability company ("**Tenant**"). Landlord has leased to Tenant the real property described in **Exhibit A** attached hereto ("Premises"). The initial term of the Lease commenced effective as of January 1, 2016 and ends at 11:59 p.m. on December 31, 2036. Tenant has two (2) options to extend the Lease for twenty (20) years each, and one final option to extend the term for fifteen (15) years.

The Lease and the options contained therein are subject to the terms, conditions and provisions of that certain unrecorded lease between the parties hereto dated effective as of January 1, 2016 (the "Lease").

Landlord has granted Tenant Right of First Refusal to purchase the Premises on the terms and conditions more specifically set forth in of the Lease.

The Lease is made and entered into upon all of the terms, covenants, and conditions, and subject to all of the provisions, set forth in the Lease, which terms, covenants, conditions, and provisions of the Lease are incorporated herein by reference. By this Memorandum, all parties dealing with the above-described real property and/or the Premises are hereby put on notice as to the rights and obligations of Landlord and Tenant under the Lease. In the event of any conflict between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall control.

This Memorandum of Lease is executed on the dates set forth in the acknowledgments attached hereto, to be effective as of the _____ day of _____, 2016.

LANDLORD:

ENGLEWOOD/MCLELLAN RESEVOIR FOUNDATION, a Colorado non-profit corporation

By: _____
Name: _____
Title: _____

TENANT:

SOLANA LUCENT STATION LLC, a Delaware limited liability company

By: Solana Lucent Holdings LLC, a Delaware limited liability company, its Manager

By: RP Solana Lucent Station Investors LLC, a Delaware limited liability company, its Manager

By: ReyLenn Properties LLC, a California limited liability company, Manager

By: _____
Name: _____
Title: _____

COUNCIL COMMUNICATION

Date	Agenda Item	Subject
March 14, 2016	11ciii	Resolution of support: Englewood McLellan Reservoir Foundation exchange of land with Shea Properties d.b.a. Central Park at Highlands Ranch, LLC.
INITIATED BY Englewood McLellan Reservoir Foundation		STAFF SOURCE Michael Flaherty, EMRF Board of Directors

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

In 1999, City Council authorized the creation of the Englewood McLellan Reservoir Foundation (EMRF) for the purpose of facilitating the development of property adjacent to the City's McLellan Reservoir. On June 15, 2015, during an Executive Session and subsequently at the City Council regular meeting on July 6, 2015, EMRF presented a proposal by Shea Properties d.b.a. Central Park at Highlands Ranch, LLC, to exchange a 12.3 acre parcel owned by EMRF in Highlands Ranch Planning Area 81 (PA 81) for a 12.3 acre adjoining parcel owned by Shea Properties. The exchange is consistent with the authority granted by Ballot Question 2E, as approved by voters in November, 2014. At the July 6 meeting, Council approved a resolution of support for EMRF to proceed with negotiations for the exchange.

RECOMMENDED ACTION

EMRF recommends City Council approve a resolution supporting the EMRF to exchange a 12.3 acre parcel of EMRF property in PA81 for a 12.3 acre adjacent parcel owned by Shea Properties d.b.a. Central Park at Highlands Ranch, LLC.

BACKGROUND

In 1999, through Ordinance 41, City Council authorized the transfer of certain parcels of property in Douglas County near McLellan Reservoir to EMRF for the purpose of facilitating the development of those properties. Since that time, EMRF has managed and maintained the property, has made improvements, including over-lot grading and storm water management, and has platted most of the individual parcels, including the subject parcel.

On May 19, 2014, the EMRF Board of Directors presented a Shea Properties proposal to trade a 12.3 acre Shea parcel adjoining the northeast portion of EMRF PA 81, for a 12.3 acre EMRF parcel that adjoins Shea property in order to better facilitate development of property owned by each party. The City Attorney has advised the EMRF Board that a land trade is equivalent to a sale and would require an affirmative vote of the citizens of Englewood to accomplish.

On July 21, 2014, City Council approved an ordinance placing a ballot question on the November 2014 election seeking authorization to exchange EMRF property. Ballot Question 2E was approved by Englewood voters in the November 2104 election.

On July 6, 2015, City Council approved Resolution 85 that supported EMRF in its negotiations with Shea for the lease of PA 81 and the exchange of properties, as authorized by Ballot Question 2E in the 2014 election.

FINANCIAL IMPACT

The exchange will have no direct financial impact; however, it will enhance the overall value of each of the parcels of both EMRF and Shea.

LIST OF ATTACHMENTS

City Council Resolution
Exchange agreement

RESOLUTION NO. _____
SERIES OF 2016

A RESOLUTION SUPPORTING THE ENGLEWOOD MCLELLAN RESERVOIR FOUNDATION TO EXCHANGE 12.3 ACRES OF ENGLEWOOD MCLELLAN RESERVOIR PROPERTY IN HIGHLANDS RANCH PLANNING AREA 81 (PA 81) WITH 12.3 ACRES OF SHEA PROPERTIES d.b.a. CENTRAL PARK AT HIGHLANDS RANCH, LLC.

WHEREAS, the Englewood McLellan Reservoir Foundation was formed to oversee the development of the McLellan Reservoir property; and

WHEREAS, the Englewood City Council passed Ordinance No. 41, Series of 2014 submitting to a vote of the registered electors of the City of Englewood a question to exchange Utility Department property held in Douglas County for property of similar or greater value; and

WHEREAS, on November 4, 2014 the registered electors approved a Ballot Question to allow the exchange of Utility property owned in Douglas County for property of similar or greater value to promote development opportunities that will generate long term revenue for the public; and

WHEREAS, Shea Properties d.b.a. Central Park at Highlands Ranch, LLC. owns underdeveloped property to the North and East which abuts the Utility property; and

WHEREAS, the exchange of the Utility property with the Shea Properties d.b.a. Central Park at Highlands Ranch, LLC. will facilitate development of all the Utility property in PA 81, realizing a revenue stream to the City of Englewood in the average amount of \$460,000 per year for 20 years, with annual inflationary adjustments, of 2% per year over 20 years resulting in 9.2 million dollars to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado, hereby supports the Englewood McClellan Reservoir Foundation exchange of 12.3 acres of property for 12.3 acres of property owned by Shea Properties d.b.a. Central Highlands Ranch, LLC., attached hereto as Exhibit A.

ADOPTED AND APPROVED this 14th day of March, 2016.

ATTEST:

Joe Jefferson, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2016.

Loucrishia A. Ellis, City Clerk

EXCHANGE AGREEMENT

This Exchange Agreement (this “**Agreement**”) is made as of the “Effective Date,” as hereinafter defined, by and between CENTRAL PARK AT HIGHLANDS RANCH, LLC, a Colorado limited liability company (“**Shea**”), whose address is 6380 South Fiddlers Green Circle, Suite 400, Greenwood Village, Colorado 80111, and ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION, a Colorado nonprofit corporation (“**Englewood**”), whose address is 1000 Englewood Parkway, Englewood, Colorado 80110.

RECITALS

WHEREAS, the “**Current Shea Property**” shall mean that certain real property located in Douglas County, Colorado which is more particularly described as the “Current Shea Property” in Exhibit A attached hereto and made a part hereof;

WHEREAS, the “**Current Englewood Property**” shall mean that certain real property located in Douglas County, Colorado which is more particularly described as the “Current Englewood Property” in Exhibit A attached hereto (the Current Shea Property and the Current Englewood Property may be referred to herein collectively as the “**Current Properties**” and individually as a “**Current Property**”);

WHEREAS, Shea and Englewood have agreed that it is in their mutual best interests that the Current Shea Property and the Current Englewood Property be developed in a coordinated manner in order to maximize the value of each such Current Property;

WHEREAS, for such coordinated development to occur, Shea and Englewood have agreed that the following general matters will need to occur: (1) Douglas County will need to approve a subdivision replat of the Current Shea Property and the Current Englewood Property to reflect the parties’ development plan therefor; and (2) Shea shall convey to Englewood a portion of the Current Shea Property, defined below as the “Shea Exchange Property,” in exchange for the conveyance by Englewood to Shea of a portion of the Current Englewood Property, defined below as the “Englewood Exchange Property,” resulting in Shea owning the “Adjusted Shea Property” and Englewood owning the “Adjusted Englewood Property,” as those terms are defined below (collectively, the “**Exchange Transaction**”);

WHEREAS, in the November 4, 2014 General Election, the voters of the City of Englewood approved City of Englewood Referred Ballot Question No. 2E, which authorized the Englewood City Council “by Ordinance, to exchange Utility property owned in Douglas County for property of similar or greater value to promote development opportunities that will generate long-term revenue for the public.”

AND WHEREAS, Shea and Englewood enter into this Agreement to set forth their agreements regarding the Exchange Transaction.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Shea and Englewood enter into this Agreement effective as of the later of the date upon which Shea shall have executed this Agreement, or the date upon which Englewood shall have executed this Agreement, in each case as set forth at the end of this Agreement immediately below the respective party's execution hereof (the "**Effective Date**"), and agree as follows:

1. **Inspections.** During the period commencing on the Effective Date and expiring on the earlier of the date which is 30 days after the Effective Date or the date upon which Douglas County shall, if at all, have given the "Replat Approval," as hereinafter defined (the "**Inspection Period**"), each of Shea and Englewood shall have the right, at its expense, to conduct such due diligence inspections of the other party's Current Property as it may desire, including, without limitation, obtaining a title commitment from Fidelity National Title Insurance Company ("**Title Company**") for, and reviewing the status of title to, the Current Properties, and performing such surveys, studies, environmental investigations, soil studies and other inspections as each party may determine. Additionally, Shea shall have the right to inspect any wildlife which may be on the Current Properties and to mitigate those of such wildlife which are recognized as a nuisance, which mitigation shall include if reasonably necessary, without limitation, light grading of the Current Properties after such removal or extermination to protect horses or cattle from stumbling into the holes and depressions in the Current Properties. If any exceptions to title shown in a title commitment delivered to a party for the other party's Current Property are not satisfactory to such party, such party may, during the Inspection Period, give written notice of objection to any such exception and the parties shall in good faith endeavor to either cure such objection or otherwise resolve such objection to the satisfaction of both parties; provided, however, that neither party shall be obligated to cure or resolve any such objection to title and neither party shall object to any exception to title affecting the other party's Current Property unless such exception would materially and adversely affect the marketability of such Current Property or the development or use thereof as contemplated by this Agreement. In any case, if a party is not satisfied with the status of title to the other party's Current Property and the parties are unable to cure or resolve the objections thereto by the expiration of the Inspection Period, such party shall have the right to terminate this Agreement as provided hereinafter in this Section. The exceptions to title to a respective Current Property shown in the last title commitment delivered to the parties during the Inspection Period shall be referred to herein as the "**Permitted Exceptions**" for such Current Property. Each party has the right to enter upon the Current Property owned by the Other Party during the Inspection Period and thereafter until this Agreement may, if at all, be terminated, for the purpose of performing such inspections, provided that no such inspections shall result in any damage to such Current Property (except as may otherwise be permitted pursuant to Shea's right to mitigate certain wildlife on the Current Properties as provided above), and the inspecting party shall, at its expense, repair any such prohibited damage. Each of Shea and Englewood agrees to indemnify, defend and hold the other party and its Current Property harmless from and against any and all obligations, liabilities, claims, demands, liens (including, without limitation, mechanics' liens), loss, damage, cost or causes of action whatsoever in any way due to or arising out of or related to the activities of such indemnifying party on such Current Property or pursuant to such inspections. Additionally each of Shea and Englewood assumes any risk involved in connection with such inspections, and

releases and discharges the other party from any liability for loss, damage or injury incurred by the inspecting party arising out of such inspecting party's entry or presence upon such Current Property or such party's inspections, unless due to the gross negligence or willful misconduct of the other party. Shea and Englewood acknowledge and agree that, except as is otherwise expressly provided for elsewhere in this Agreement, neither party has made any representations, warranties or agreements to or on behalf of the other party as to any matter concerning the Current Properties, the present use thereof or the suitability for the other party's intended use of the respective Exchange Property to be acquired by such party at the Exchange Closing. If either party is dissatisfied with any matter pertaining to the other party's Current Property, such party, in its sole and absolute discretion, shall have the right to terminate this Agreement by giving written notice of termination to the other party on or before the last day of the Inspection Period, in which case this Agreement shall terminate and both parties shall be relieved of all further obligations hereunder; provided, however, each party shall remain liable to the other party following any termination of this Agreement for any obligations which survive any termination of this Agreement. The obligations of each party under this Section shall survive the Exchange Closing and any termination of this Agreement.

2. Replat. The "**Replat**" shall mean a subdivision replat of the Current Properties that: (a) shall divide the Current Properties into lots, a private street tract (the "**Private Street**") and other tracts generally in accordance with the draft of the Replat attached hereto as Exhibit B and incorporated by reference herein (the "**Draft Replat**"), together with any modifications thereto as may be approved by Shea and Englewood from time to time; (b) shall provide that a portion of the Current Shea Property (the "**Shea Exchange Property**") shall be combined with a portion of the Current Englewood Property to form one of such Lots, which is shown on the Draft Replat as Lot 4 and which shall contain approximately 33.283 acres (the "**Adjusted Englewood Property**"); (c) shall provide that a portion of the Current Englewood Property (the "**Englewood Exchange Property**") shall be combined with a portion of the Current Shea Property to form three separate Lots which are shown on the Draft Replat as Lot 1, Lot 2 and Lot 3 and which shall contain a total of approximately 29.083 acres (the "**Adjusted Shea Property**") (the Adjusted Shea Property and the Adjusted Englewood Property may be referred to herein collectively as the "**Adjusted Properties**" and individually as an "**Adjusted Property**"); (d) shall provide for a tract containing approximately 2.949 acres, which is shown on the Draft Replat as Tract A (the "**Park Property**"), which shall be conveyed and dedicated by Shea and Englewood to the Highlands Ranch Metropolitan District (the "**Metro District**") or, at Shea's option, to another governmental or quasi-governmental entity or property owners' association (including, without limitation, Highlands Ranch Business Park, Inc., a Colorado nonprofit corporation [the "**Business Park Association**"]), selected by Shea that shall have authority to own, operate and maintain the Park Property, either on the Replat or by separate document executed and recorded simultaneously with the granting of the Replat Approval (the "**Park Deed**"); provided, however, that if the Property is to be so conveyed to the Business Park Association, the Park Deed shall include provisions, reasonably acceptable to Shea and Douglas County, by which Shea shall reserve an easement for the purpose of the construction, installation, use, operation, maintenance, repair and replacement of a telecommunications tower and related foundation, utilities and other facilities, and related telecommunications equipment and facilities, together with the right to grant to others the right to use such easement (the "**Tower Easement Provisions**"); and (e) shall provide that title to the Private Street shown on the Replat shall be conveyed by Shea and Englewood to Highlands Ranch Business Park, Inc., a

Colorado nonprofit corporation or, at Shea's option, to a governmental or quasi-governmental entity or another property owners' association selected by Shea that shall have authority to own, operate and maintain the Private Street, by a deed executed by Shea and Englewood and the grantee thereunder (the "**Private Street Deed**"). If the Private Street shall be so conveyed to the Business Park Association, then the form of the Private Street Deed shall be in the form of the deed attached hereto as Exhibit C and incorporated by reference herein. If the Park Property and the Private Street shall both be so conveyed to the Business Park Association, then the Park Property shall also be included in the Private Street Deed, which shall be modified to include the conveyance of the Park Property and the Tower Easement Provisions. If either the Private Street or the Park Property, or both, shall be so conveyed to a party or entity other than the Business Park Association, then the form deed by which either the Private Street or the Park Property shall be conveyed shall be substantially in the form of the deed attached hereto as Exhibit C, but with reasonable and appropriate modifications thereto to reflect the different grantee thereunder, that the respective property conveyed thereunder may not be annexed to the "**Community Declaration**" or the "**Business Park Declaration**," as those terms are defined in the deed attached hereto as Exhibit C, and such other modifications as may reasonably be appropriate. Additionally, if either the Private Street or the Park Property is to be so conveyed to the Business Park Association, then the respective property shall be annexed to the Community Declaration and the Business Park Declaration by the execution by Shea and Englewood, and recordation, of the form of Supplemental Declaration that is attached hereto as Exhibit D and incorporated by reference herein (the "**Supplemental Declaration**"), which shall be recorded prior to the recordation of the Park Deed and the Private Street Deed. If the Exchange Closing under this Agreement occurs, in no event shall Englewood be obligated to construct any improvements upon, or to maintain, repair or replace, the Park Property or the Private Street or any such improvements, or to pay for any of the costs for any such construction, maintenance, repair or replacement of the Park Property or the Private Street or any improvements thereon, and Shea agrees to indemnify and hold Englewood harmless from all such obligations and costs; provided, however, that nothing in this sentence shall preclude the tenant under the Ground Lease or under any other lease of any portion of the Adjusted Englewood Property from being obligated to pay any of such costs, including, without limitation, assessments payable to the Business Park Association, to pay for the costs to maintain, repair and replace the Private Street, so long as the owner of fee simple title to the Adjusted Englewood Property (including Englewood at such times as it constitutes such owner) is not obligated to pay any of such costs.

3. Replat Approval. Promptly after the Effective Date, Shea and Englewood shall jointly submit the Draft Replat to Douglas County for its review and approval (the "**Replat Approval**"). Shea and Englewood have previously reviewed and approved the Draft Replat, and no modifications to the same shall be made or agreed to by a party without the written consent of the other party, which consent shall not unreasonably be withheld, delayed or conditioned. If the Replat Approval is obtained, Shea and Englewood shall execute the Replat, provided such Replat shall not be recorded or become effective until the Exchange Closing (as hereinafter defined). In any case, however, if the Replat Approval has not been obtained by the date which is six months after the Effective Date (the "**Douglas County Approval Deadline**"), then this Agreement shall automatically terminate and both parties shall be relieved of all further obligations hereunder, except for any obligations under this Agreement that expressly survive a termination of this Agreement. Shea and Englewood shall jointly execute any subdivision improvements agreement required by Douglas County to be executed in connection with the Replat Approval (the "**SIA**").

Shea shall pay 100% of the costs to construct all of the improvements required to be constructed pursuant to the SIA, whether the same are required to be constructed in the Private Street, on the Park Property or any other Tract created on the Replat, or on either of the Adjusted Englewood Property or the Adjusted Shea Property. Shea shall also assume any other obligations of the developer under the SIA.

4. Shea's Contingencies. The "Ground Lease" shall mean that certain Ground Lease with an effective date the same as the Effective Date under this Agreement by and between Shea and Englewood, whereby Englewood, as Landlord, has agreed to lease the Adjusted Englewood Property to Shea, as Tenant, in accordance with the terms and conditions provided therein. The obligation of Shea to close the Exchange Transaction at the Exchange Closing is also expressly subject to the conditions that, as of the Exchange Closing: (a) the Ground Lease shall be in full force and effect in accordance with its terms and conditions; (b) the contingencies to the Tenant's obligations under the Ground Lease contained in Articles 3.5 and 3.6 of the Ground Lease, have either been satisfied, or by completion of the Exchange Closing will have been satisfied, or have expressly been waived in writing by Shea; and (c) Englewood, as the Landlord under the Ground Lease, and pursuant to Article 7.2.A of the Ground Lease, shall have acknowledged that the party (the "Prospective Ground Lease Assignee") to which Shea proposes to assign its rights as the Tenant under the Ground Lease constitutes a "Qualified Assignee," as defined in the Ground Lease, Englewood shall have approved the form of the document pursuant to which the Prospective Ground Lease Assignee assumes all of the obligations of Shea as the Tenant under the Ground Lease (the "Ground Lease Assignment and Assumption Agreement"), and simultaneously with the Exchange Closing, each of Shea and the Prospective Ground Lease Assignee shall have executed and delivered the Ground Lease Assignment and Assumption Agreement. If any of the foregoing contingencies to close the Exchange Transaction at the Exchange Closing have not been satisfied as of the date of the Exchange Closing, then Shea shall have the right, at its option and by written notice from Shea to Englewood given by no later than such date, either to waive such contingency and close at the Exchange Closing in accordance with this Agreement, or to terminate this Agreement, in which case each of Shea and Englewood shall be relieved of all further obligations under this Agreement, other than any obligations under this Agreement that expressly survive a termination of this Agreement.

5. Englewood's Contingencies. The obligation of Englewood to close the Exchange Transaction at the Exchange Closing is also expressly subject to the conditions that, as of the Exchange Closing: (a) the Ground Lease shall be in full force and effect in accordance with its terms and conditions; and (b) the contingencies to the Landlord's obligations under the Ground Lease contained in Article 3.6 of the Ground Lease have either been satisfied, or by completion of the Exchange Closing will have been satisfied, or have expressly been waived in writing. If either of the foregoing contingencies to close the Exchange Transaction at the Exchange Closing have not been satisfied as of the date of the Exchange Closing, then Englewood shall have the right, at its option and by written notice from Englewood to Shea given by no later than such date, either to waive such contingency and close at the Exchange Closing in accordance with this Agreement, or to terminate this Agreement, in which case each of Shea and Englewood shall be relieved of all further obligations under this Agreement, other than any obligations under this Agreement that expressly survive a termination of this Agreement.

6. Exchange Closing. If the Replat Approval has been obtained, then at a closing (the “**Exchange Closing**”) to be held on the first business day which is at least 10 days after the date upon which the Replat Approval has been obtained, or such earlier date as the parties may agree or as may be required by Douglas County as a condition to its granting of the Replat Approval: (a) Shea shall execute and deliver and cause to be recorded a special warranty deed by which Shea shall convey to Englewood all of Shea’s title in and to the Shea Exchange Property, and a quit claim deed by which Shea shall convey to Englewood the Adjusted Englewood Property; (b) Englewood shall execute, deliver and cause to be recorded a special warranty deed by which Englewood shall convey to Shea all of Englewood’s title in and to the Englewood Exchange Property, and a quit claim deed by which Englewood shall convey to Shea the Adjusted Shea Property; (c) Shea and Englewood shall execute and cause to be recorded the Private Street Deed and the Park Deed, in the forms as provided above, and if either the Private Street or the Park Property is to be conveyed to the Business Park Association, Shea and Englewood shall also execute the Supplemental Declaration and cause the same to be recorded; (d) real property taxes and assessments for each Adjusted Property for the year of the Exchange Closing shall be prorated based on the then most recently available amount of real property taxes and assessments with respect to the Adjusted Property, and all other appropriate expenses for each respective Adjusted Property shall also be prorated, and such prorations shall be final; (e) each of Shea and Englewood shall have the right to obtain, at its expense, an owner’s policy of title insurance for the respective Adjusted Property to be acquired by it; (f) each party shall bear all of its own expenses for the Exchange Closing, including, without limitation, recording and documentary fees; (g) title to each Adjusted Property shall be free and clear of all liens and encumbrances, and shall be subject to only the Permitted Exceptions for such Adjusted Property; and (h) the parties shall execute all other instruments and documents as may be customary in Douglas County, Colorado or as may be required by the Title Company in connection with its issuance of any such owner’s policy of title insurance. The parties agree that the Englewood Exchange Property to be so conveyed by Englewood to Shea, and the Shea Exchange Property to be so conveyed by Shea to Englewood, are of the same size and of equal value and therefore neither party shall be required to pay any monetary consideration to the other party for the conveyance of the same. Shea and Englewood agree that each party shall take the respective Exchange Property to be acquired by it at the Exchange Closing in its then current “as-is” condition and that, except as is otherwise provided in Section 3, neither party shall have any obligation under this Agreement to make or pay for any improvements to be constructed on or in connection with the respective Adjusted Property to be owned by the other party from and after the Exchange Closing.

7. Inclusion in Highlands Ranch Metropolitan District. By no later than 120 days after the Exchange Closing, Shea agrees to cause the Adjusted Shea Property, and Englewood agrees to cause the Adjusted Englewood Property, to be included within the boundaries of the Highlands Ranch Metropolitan District, including, without limitation, by executing such reasonable documents as may reasonably be necessary to effect such inclusions. Shea and Englewood further agree reasonably to cooperate with each other as may reasonably be necessary to effect such inclusions.

8. Default. An “Event of Default” by a defaulting party under this Agreement shall be deemed to have occurred if such defaulting party shall have defaulted in the performance of, or failed to comply with, any of its obligations under this Agreement, and such party shall have failed to cure such default or failure to comply within 30 days after the non-defaulting party has

given written notice to the defaulting party of such default or failure to comply. Upon the occurrence of an Event of Default by a party under this Agreement, the non-defaulting party shall be entitled to any and all remedies available at law or in equity as a result of such Event of Default.

9. Assignability. Neither Shea nor Englewood shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not unreasonably be withheld, delayed or conditioned. Notwithstanding the foregoing, however, Shea shall have the right to assign its rights under this Agreement, in whole or in part, without obtaining the consent of Englewood, to a "Shea Related Entity," as hereinafter defined, provided that (a) Shea gives written notice to Englewood of such assignment at least 10 days prior to the effective date of such assignment, accompanied by reasonable written evidence that the assignee is a Shea Related Entity, and (b) the assignee agrees in a written instrument delivered to, and enforceable by, Englewood to assume the respective obligations of Shea under this Agreement corresponding to the rights so assigned. A "**Shea Related Entity**" shall mean either (i) any entity directly or indirectly owned or controlled by John Shea or Peter Shea or the children or grandchildren of John Shea, Peter Shea or the late Edmund Shea, the members of their respective families, or trusts for any of their benefit, or (ii) any entity directly or indirectly controlling, controlled by or under common control with any of J. F. Shea Co., Inc., Shea Properties LLC or Shea Homes Limited Partnership. Upon the execution by any such assignee of Shea of a document whereby the assignee assumes all or certain of Shea's obligations hereunder, the party who theretofore constituted Shea hereunder shall be relieved of the obligations hereunder which have been so assumed by such assignee, and Englewood shall accept performance of such obligations by the assignee.

10. Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, sent by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), United States certified mail (return receipt requested with postage fully prepaid) or express mail service, or by facsimile which includes a confirmation of delivery, addressed to the other party as follows:

If to Shea: Central Park at Highlands Ranch, LLC
6380 South Fiddlers Green Circle
Suite 400
Greenwood Village, CO 80111
Attention: John Kilrow
Facsimile No. (303) 740-6954

With copies to: Shea Homes Limited Partnership
1805 Shea Center Drive,
Suite 450
Highlands Ranch, CO 80219
Attention: Jeffrey H. Donelson, Esq.
Facsimile No. (303) 791-8558

And to: Dennett L. Hutchinson, Jr.
Holland & Hart LLP
6380 S. Fiddlers Green Circle, Suite 500
Greenwood Village, CO 80111
Facsimile No. (303) 713-6241

If to Englewood: Englewood/McLellan Reservoir Foundation
1000 Englewood Parkway
Englewood, Colorado 80110
Attention: President
Facsimile No. _____

With copies to: Berenbaum Weinshienk PC
370 17th Street, 48th Floor
Denver, Colorado 80202
Attention: H. Michael Miller, Esq.
Facsimile No. 303 629-7610

And copies to: City of Englewood
1000 Englewood Parkway
Englewood, Colorado 80110
Attention: City Attorney
Facsimile No. (303) 783-6892

or at such other address or facsimile number as may be specified from time to time in writing by either Party. All such notices hereunder shall be deemed properly given and received on the earlier of when actually delivered and received (including, without limitation, if delivered and received by facsimile) , or three business days after mailed, if sent by registered or certified mail, postage prepaid.

11. Recitals Incorporated. The Recitals contained above in this Agreement are expressly made a part of this Agreement and constitute a part of the agreement of the parties expressed in this Agreement.

12. Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and all prior agreements or understandings shall be deemed merged in this Agreement.

13. No Oral Amendment or Modifications. No amendments, waivers or modifications hereof shall be made or deemed to have been made unless in writing executed by the party to be bound thereby.

14. Binding Effect. Subject to the Section of this Agreement entitled "Assignability," this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. Applicable Law. This Agreement shall be interpreted and enforced according to the laws of the State of Colorado.

16. No Brokers. Each party warrants and certifies to the other party that such party has not engaged or utilized the services of a broker in connection with this Agreement or the transaction contemplated hereby. Each party agrees to defend, indemnify and hold harmless the other from and against any claim for broker's or finder's fees or commissions made by any party claiming to have dealt with it in connection with this Agreement or the transaction contemplated hereby. The obligations of each party under this Section shall survive the Exchange Closing and any termination of this Agreement.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one agreement.

18. Costs of Legal Proceedings. In the event that either party institutes legal proceedings with respect to this Agreement or the transaction contemplated hereby, including, but not limited to, appearing and participating in any action initiated by or against the other party under the bankruptcy laws of the United States or similar laws of any state, the prevailing party shall (or in the case of such a bankruptcy action by a party, the other party shall) be awarded, in addition to any other relief to which it is entitled, its costs and expenses incurred in connection with such legal proceedings, including, without limitation, reasonable attorneys' fees. The obligations of each party under this Section shall survive the Exchange Closing and any termination of this Agreement.

19. Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal or Colorado legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or federal or Colorado legal holiday.

20. Authority. Each of Shea and Englewood represents and warrants to the other party that this Agreement constitutes a legal, valid and binding obligation of the representing party and (together with all documents contemplated hereby when executed and delivered) is enforceable against the representing party in accordance with its terms (as such enforceability may be modified by applicable bankruptcy laws and the laws applicable to creditors rights generally), and that the individuals executing this Agreement and the documents contemplated by this Agreement on its behalf are duly elected or appointed and validly authorized to execute and deliver the same.

21. Survival. Each provision of this Agreement that is required to be performed or observed after the Exchange Closing shall survive and remain enforceable after the Exchange Closing.

SIGNATURE PAGE
FOR
EXCHANGE AGREEMENT
BETWEEN
CENTRAL PARK AT HIGHLANDS RANCH, LLC
AND
ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

SHEA:

CENTRAL PARK AT HIGHLANDS RANCH,
LLC, a Colorado limited liability company

By: Shea Properties Management Company, Inc.,
a Delaware corporation, its Manager

By: [Signature]
Name: John Kilrow
Title: Assistant Secretary

By: John Kilrow
Name: John Kilrow
Title: Assistant Secretary

Date Executed: March 9, 2016

ENGLEWOOD:

ENGLEWOOD/MCLELLAN RESERVOIR
FOUNDATION, a Colorado nonprofit corporation

By: _____
Name: _____
Title: _____

Date Executed: March __, 2016

EXHIBIT A
TO
EXCHANGE AGREEMENT

Legal Description of Current Shea Property

Lot 1 and Tract A,
Highlands Ranch Filing No. 144,
County of Douglas,
State of Colorado

Lot 1,
Highlands Ranch Filing No. 147,
County of Douglas,
State of Colorado

Legal Description of Current Englewood Property

Lots 1, 2 and 3,
Highlands Ranch Filing No. 156,
County of Douglas,
State of Colorado.

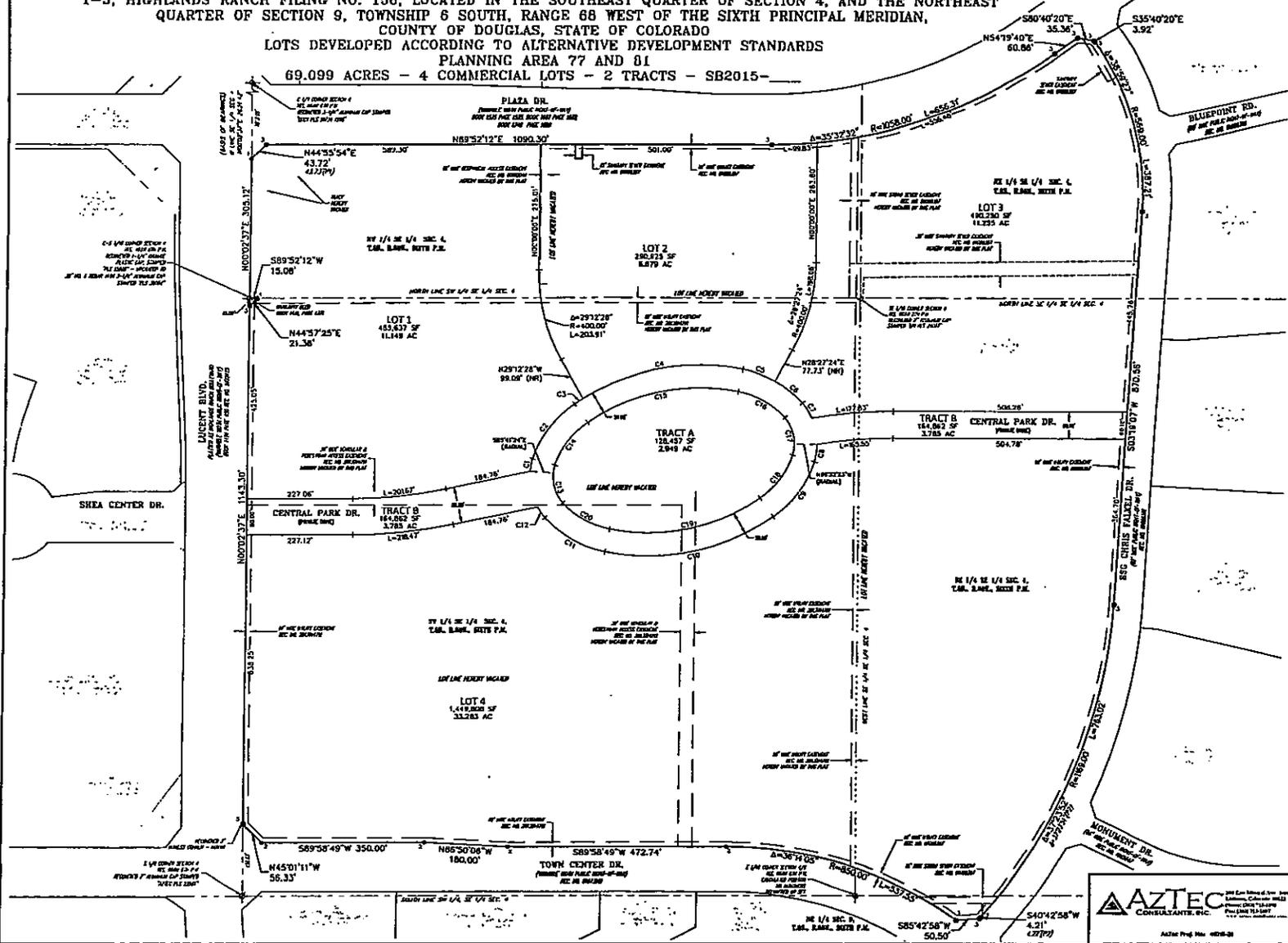
EXHIBIT B
TO
EXCHANGE AGREEMENT

Copy of Draft Replat – See Separate Document Attached

HIGHLANDS RANCH - FILING NO. 156, 1ST AMENDMENT

REPLAT OF LOT 1 AND TRACT A, HIGHLANDS RANCH FILING NO. 144, LOT 1, HIGHLANDS RANCH FILING NO. 147, AND LOTS 1-3, HIGHLANDS RANCH FILING NO. 156, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 4, AND THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 6 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO

LOTS DEVELOPED ACCORDING TO ALTERNATIVE DEVELOPMENT STANDARDS
PLANNING AREA 77 AND 81
69.099 ACRES - 4 COMMERCIAL LOTS - 2 TRACTS - SB2015-



LEGEND

- 1 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 2 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 3 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 4 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 5 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 6 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 7 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 8 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 9 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 10 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 11 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 12 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 13 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 14 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 15 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 16 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 17 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 18 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 19 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81
- 20 REVISION 1-17 CHANGE PLANNING AREA TO 77 AND 81

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	CHORD
C1	113°36'34"	142.12'	28.80'	510'06'53" W 26.75'
C2	37°17'16"	234.44'	152.57'	536'24'11" W 149.89'
C3	74°34'32"	468.89'	21.78'	555'44'36" W 21.78'
C4	44°28'24"	468.89'	361.44'	579'18'11" W 352.45'
C5	181°32'8"	234.44'	74.57'	117°00'28" W 74.25'
C6	180°34'8"	234.44'	78.00'	151°21'48" W 77.64'
C7	160°47'8"	142.12'	39.84'	131°57'31" W 39.73'
C8	152°7'36"	142.12'	38.33'	108°11'25" W 38.23'
C9	37°17'16"	234.44'	152.57'	136°24'11" W 149.89'
C10	47°07'07"	468.89'	363.27'	177°37'50" W 379.52'
C11	37°17'16"	234.44'	152.57'	560'28'32" W 149.89'
C12	113°36'34"	142.12'	28.80'	534'11'57" W 28.75'
C13	54°57'46"	92.12'	88.37'	512°07'18" W 85.02'
C14	37°07'39"	184.44'	118.44'	536°34'34" W 117.38'
C15	47°15'41"	418.89'	342.88'	577°57'04" W 333.08'
C16	37°06'38"	184.44'	118.44'	160°28'54" W 117.38'
C17	54°57'46"	92.12'	88.37'	112°07'18" W 85.02'
C18	37°06'38"	184.44'	118.44'	163°34'34" W 117.38'
C19	47°15'41"	418.89'	342.88'	177°57'04" W 333.08'
C20	37°06'38"	184.44'	118.44'	580°38'54" W 117.38'



AZTEC CONSULTANTS, INC.
200 East Spruce Street, Suite 100
Colorado Springs, CO 80903
Phone: (719) 594-1111
Fax: (719) 594-1112
www.aztecinc.com

DEVELOPER
SHEA HOMES
1805 SHEA CENTER DRIVE, SUITE 450
HIGHLANDS RANCH, COLORADO
(303) 791-8180

DATE OF PREPARATION	09/14/09
SCALE	TYPICAL
SHEET 2 OF 2	

EXHIBIT C
TO
EXCHANGE AGREEMENT

Form of Private Street Deed – See Separate Document Attached

SPECIAL WARRANTY DEED

(Highlands Ranch Filing No. 156. 1st Amendment – Private Street)

This Special Warranty Deed (this "Deed") is dated this ____ day of _____, 201__, by and between CENTRAL PARK AT HIGHLANDS RANCH, LLC, a Colorado limited liability company ("Shea"), whose address is 6380 South Fiddlers Green Circle, Suite 400, Greenwood Village, Colorado 80111, and ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION, a Colorado nonprofit corporation ("Englewood"), whose address is 1000 Englewood Parkway, Englewood, Colorado 80110 (Shea and Englewood shall hereinafter collectively be referred to as the "Grantor"), and HIGHLANDS RANCH BUSINESS PARK, INC., a Colorado nonprofit corporation ("Grantee"), whose mailing address is 1805 Shea Center Drive, Suite 450, Highlands Ranch, Colorado 80129.

WITNESSETH, that Grantor, for and in consideration of the covenants, conditions and restrictions contained herein, but without other consideration, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, its successors and assigns forever, that certain real property situate, lying and being in the County of Douglas, State of Colorado that is more particularly described in Exhibit A attached hereto and incorporated by reference herein (the "Property"). A street address of the Property does not exist;

TOGETHER WITH all and singular the hereditaments and appurtenances thereunto belonging, or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of Grantor, either in law or equity, of, in and to the Property.

EXCEPTING AND RESERVING unto each of Shea and Englewood the "Reserved Access Easement," as hereinafter defined;

SUBJECT TO the "Permitted Exceptions" which shall mean (a) the standard printed exceptions contained in the customary forms of title insurance commitments and owner's title insurance policies in use in the State of Colorado; (b) any easements, restrictions and conditions shown on the recorded plat(s) for the Property; (c) real property taxes and assessments for 201__ and subsequent years; (d) building, zoning and other applicable ordinances and regulations of the County of Douglas, Colorado; (e) the reservations, exceptions, easements, rights of way, restrictive covenants, conditions and other matters of record; (f) taxes, assessments, fees or charges, if any, assessed by any applicable taxing entity; (g) the covenants, conditions, restrictions and easements hereinafter reserved or set forth in this Deed; (h) the "Community Declaration," as hereinafter defined; (i) the "Business Park Declaration," as hereinafter defined; and (j) the "Supplemental Declaration," as hereinafter defined.

TO HAVE AND TO HOLD the Property with the appurtenances, unto Grantee, its successors and assigns forever.

AND SHEA, for itself, its successors and assigns, covenants and agrees to and with Grantee, its successors and assigns, to warrant and defend the quiet and peaceable possession of that portion of the Property described as the "Shea Property" on Exhibit B attached hereto and incorporated by reference herein (the "Shea Property") by Grantee, its successors and assigns, against every person who lawfully claims the Shea Property or any part thereof, by, through or under Shea, subject to the Permitted Exceptions, and the covenants, conditions and restrictions herein contained;

AND ENGLEWOOD, for itself, its successors and assigns, covenants and agrees to and with Grantee, its successors and assigns, to warrant and defend the quiet and peaceable possession of that portion of the Property described as the "Englewood Property" in Exhibit C attached hereto and incorporated by reference herein (the "Englewood Property") by Grantee, its successors and assigns, against every person who lawfully claims the Englewood Property or any part thereof, by, through or under Englewood, subject to the Permitted Exceptions, and the covenants, conditions and restrictions herein contained.

I. SHEA'S EASEMENTS.

1.1. Access Easements. "Access Easements" shall mean easements reasonable and necessary for access to and from the Annexable Area and any other property now or hereafter owned by Shea or any "Shea Related Entity," as hereinafter defined.

1.2. Utility Easements. "Utility Easements" shall mean easements for installation, construction, operation, maintenance, repair and replacement of underground lines and facilities and surface-mounted equipment and appurtenances for utility purposes, including, but not limited to, water, sewer, gas, electricity, telephone and cable television service to serve the Annexable Area and any other property now or hereafter owned by Shea or any Shea Related Entity.

1.3. Drainage Easements. "Drainage Easements" shall mean easements for drainage and for installation, construction, operation, maintenance, repair and replacement of gutters, culverts, underground lines, and other facilities for drainage purposes to serve the Annexable Area and any other property now or hereafter owned by Shea or any Shea Related Entity.

1.4. Annexable Area. "Annexable Area" shall mean all of the real property described on Exhibit B attached to the Community Declaration.

1.5. Shea Related Entity. A "Shea Related Entity" shall mean either (a) any entity directly or indirectly owned or controlled by John Shea or Peter Shea or the children or grandchildren of John Shea, Peter Shea or the late Edmund Shea, the

members of their respective families, or trusts for any of their benefit, or (b) any entity directly or indirectly controlling, controlled by or under common control with any of J. F. Shea Co., Inc., Shea Properties LLC or Shea Homes Limited Partnership.

1.6. Granting of Easements. For a period of twenty (20) years subsequent to the date hereof, Grantee agrees that it will grant Shea or a Shea Related Entity, its successors, assigns and designees, Access Easements, Utility Easements and Drainage Easements (together, "**Easements**") within the Property, to the extent that any facilities or improvements planned for installation within the Easements (the "**Improvements**") do not unreasonably interfere with any existing or then-planned facilities or improvements within the Property. For purposes of this paragraph, "then-planned facilities or improvements" shall mean any facilities or improvements of Grantee which are not yet constructed but have been provided for within Grantee's current facilities budget. Shea or the respective Shea Related Entity shall submit plans for any proposed Improvements ("**Shea's Plans**") to Grantee no less than nine (9) weeks prior to the commencement of construction, and Grantee shall have six (6) weeks from receipt of Shea's Plans to review and approve them or to notify Shea or the respective Shea Related Entity in writing of Grantee's objections thereto. Grantee's failure to notify Shea or the respective Shea Related Entity of its objections in writing within six (6) weeks of Grantee's receipt of Shea's Plans shall be deemed an approval of Shea's Plans and the Improvements.

II. RESTRICTIONS, RESERVATIONS AND ANNEXATIONS.

2.1. Community Declaration. "**Community Declaration**" shall mean the Community Declaration for Highlands Ranch Community Association, Inc., dated September 1, 1981, and recorded September 17, 1981 in Book 421 at Page 924 of the records in the office of the Clerk and Recorder of Douglas County, Colorado ("**Douglas County Records**"), as the same has been, and hereafter may be, amended from time to time.

2.2. Business Park Declaration. "**Business Park Declaration**" shall mean, collectively, the Subassociation Declaration for Highlands Ranch Business Park, Inc. of Highlands Ranch Community Association, Inc. dated February 14, 1989, recorded February 21, 1989 in Book 841 at Page 1115 of the Douglas County Records, as amended by the Amendment of Subassociation Declaration for Highlands Ranch Business Park, Inc., dated June 7, 1990, recorded June 11, 1990, in Book 916 at Page 49 of the Douglas County Records.

2.3. Supplemental Declaration. "**Supplemental Declaration**" shall mean that certain Supplemental Declaration for Annexed Property No. 207___ of Highlands Ranch Community Association, Inc. and Highlands Ranch Business Park, Inc., of even date herewith and to be recorded on the same date as, but prior to, the recording of this Deed in the Douglas County Records, with respect to the Property, executed by Grantor and consented to by Shea Homes Limited Partnership, which annexes the Property to the Community Association Area under the Community Declaration and to the Business Park

Association Area under the Business Park Declaration, as is more particularly provided therein.

2.4. Designation of Property under Business Park Declaration. Pursuant to Section 2.5 of the Supplemental Declaration, the Property has been designated as a "Common Access Area" and as a part of the "Common Area" and the "Business Park Association Properties," as those terms are defined in the Business Park Declaration, under and for the purposes of the Business Park Declaration. Grantee acknowledges and agrees that, consequently, Grantee shall be obligated, and shall, own, use, occupy, maintain, alter and improve the Property, and all improvements (including, without limitation, the "Street Improvements" as defined in the Supplemental Declaration) now or hereafter located upon the Property, in accordance with the "Restrictions," as defined in the Business Park Declaration, applicable to the Common Access Areas, the Common Area and the Business Park Association Properties set forth in the Business Park Declaration and the Supplemental Declaration.

2.5. Reservation of Access Easement. The "Reserved Access Easement" shall mean a private, non-exclusive perpetual easement over and across the Property for the purpose of vehicular and pedestrian access, ingress to and egress from each of the Shea Property and the Englewood Property, and any lot or parcel within, or any other portion of, the Shea Property and the Englewood Property, to and from adjacent public streets, including, without limitation, Lucent Boulevard and Sargent Chris Falkel Drive. In addition to any access rights that may be created under the Business Park Declaration and the Supplemental Declaration over and across the Property, Shea and Englewood each hereby reserve the Reserved Access Easement, for themselves, as the Owners of the Shea Property and the Englewood Property, respectively, and their successors and assigns. The Reserved Access Easement (a) shall be for the benefit of each of the Shea Property and the Englewood Property and each lot or parcel within, or other portion of, the Shea Property and the Englewood Property, (b) may be used by the Owners of the Shea Property and the Englewood Property and each lot or parcel within, or other portion of, the Shea Property and the Englewood Property, and the Designated Users of such Owners, and (c) shall be appurtenant to, for the benefit of, and run with title to each of the Shea Property and the Englewood Property and each lot or parcel within, or other portion of, the Shea Property and the Englewood Property. "Owner" shall mean the owner, or if more than one, all owners collectively, of fee simple title to either the Shea Property or the Englewood Property, or any lot or parcel within, or other portion of, either the Shea Property or the Englewood Property, from time to time, and its or their successors and assigns. Shea currently is the Owner of the Shea Property and Englewood currently is the Owner of the Englewood Property. The "Designated Users" of an Owner shall mean any person or party entering upon the Property with the express or implied permission of such Owner, or of any tenant of such Owner, for purposes of access to and from the Shea Property or the Englewood Property, or any portion thereof, including, without limitation, the employees, tenants, agents, licensees, customers and invitees of such Owner or of any tenant of such Owner.

2.6. Restrictions. The Property is conveyed, and this conveyance accepted, subject to all of the covenants, conditions and restrictions applicable to the Property as set forth in this Deed (collectively the "**Restrictions**"), which Restrictions are made for the benefit of the Shea Property and the Englewood Property.

2.7. Remedies. Grantee acknowledges, by its acceptance of this Deed and taking possession of the Property, that a breach of or failure to comply with the Restrictions will result in irreparable harm to each Owner, not compensable by money damages. Accordingly, if there is a breach of or failure to comply with any such Restrictions, then each Owner, or both, and each of their successors and assigns, shall be entitled to an injunction ordering specific performance of such Restrictions, and prohibiting any breach thereof. If court proceedings are required to enforce any of the rights under this Deed, the prevailing party shall be awarded its costs and expenses in connection therewith, including, without limitation, reasonable attorneys' fees.

2.8. Binding Effect. This Deed shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns. The Restrictions contained in this Deed shall be construed as covenants running with the Property, and every person who now or hereafter owns or acquires any right, title, estate or interest in or to the Property is and shall be conclusively deemed to have consented and to have agreed to every Restriction contained in this Deed, whether or not any reference to the Restrictions is contained in the instrument by which such person acquires an interest in the Property.

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SIGNATURE PAGE
FOR
SPECIAL WARRANTY DEED
BY
CENTRAL PARK AT HIGHLANDS RANCH, LLC
AND
ENGLEWOOD MCLELLAN RESERVOIR FOUNDATION
TO
HIGHLANDS RANCH BUSINESS PARK, INC.

(Highlands Ranch Filing No. 156, 1st Amendment – Private Street)

IN WITNESS WHEREOF, Shea, Englewood and Grantee have executed this Deed as of the day and year first above written.

SHEA:

CENTRAL PARK AT HIGHLANDS
RANCH, LLC, a Colorado limited liability
company

By: Shea Properties Management
Company, Inc., a Delaware
corporation, its Manager

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ENGLEWOOD:

ENGLEWOOD/MCLELLAN RESERVOIR
FOUNDATION, a Colorado nonprofit
corporation

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____ as _____ and _____ as _____ of Shea Properties Management Company, Inc., a Delaware corporation, as Manager of CENTRAL PARK AT HIGHLANDS RANCH, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____ as _____ of ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT A
TO
SPECIAL WARRANTY DEED

(Highlands Ranch Filing No. 156, 1st Amendment – Private Street)

Legal Description of Property

The private roadway and private street shown and created, and which is labeled as _____ Street and as being subject to Specific Purpose Easement "_____" as more particularly provided, on the Plat for Highlands Ranch Filing No. 156, 1st Amendment, recorded _____, 2016, at Reception No. _____ of the Douglas County Records.

EXHIBIT B
TO
SPECIAL WARRANTY DEED

(Highlands Ranch Filing No. 156, 1st Amendment – Private Street)

Legal Description of Shea Property

Lots 1, 2, and 3, Highlands Ranch Filing No. 156, 1st Amendment, County of Douglas,
State of Colorado, according to the recorded plat thereof

EXHIBIT C
TO
SPECIAL WARRANTY DEED

(Highlands Ranch Filing No. 156, 1st Amendment – Private Street)

Legal Description of Englewood Property

Lot 4, Highlands Ranch Filing No. 156, 1st Amendment, County of Douglas, State of Colorado, according to the recorded plat thereof

EXHIBIT D
TO
EXCHANGE AGREEMENT

Form of Supplemental Declaration – See Separate Document Attached

SUPPLEMENTAL DECLARATION

FOR

ANNEXED PROPERTY NO. 207__

OF

HIGHLANDS RANCH COMMUNITY ASSOCIATION, INC.

AND

HIGHLANDS RANCH BUSINESS PARK, INC.

(Delegate District No. 207 - Assessment Area __)

(Highlands Ranch Filing No. 156, 1st Amendment – Private Street)

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**SUPPLEMENTAL DECLARATION
FOR
ANNEXED PROPERTY NO. 207__
OF
HIGHLANDS RANCH COMMUNITY ASSOCIATION, INC.
AND
HIGHLANDS RANCH BUSINESS PARK, INC.**

(Delegate District No. 207 - Assessment Area __)

(Highlands Ranch Filing No. 156, 1st Amendment – Private Street)

This Supplemental Declaration is made this _____ day of _____, 2016, by CENTRAL PARK AT HIGHLANDS RANCH, LLC, a Colorado limited liability company (“Shea”), and ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION, a Colorado nonprofit corporation (“Englewood”) (Shea and Englewood shall hereinafter collectively be referred to as the “Current Owner”), and is consented to by SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership (“Declarant”).

PREAMBLE

A. Declarant is the successor by merger to Mission Viejo Company, a California corporation (“Mission”). Mission was the Declarant under the Community Declaration for Highlands Ranch Community Association, Inc. (defined hereinafter as the “Community Declaration”) and the Subassociation Declaration for Highlands Ranch Business Park, Inc. (defined hereinafter as the “Subassociation Declaration”). Pursuant to Section 2.18 of the Community Declaration and Section 2.12 of the Subassociation Declaration, Declarant is the successor to Mission as Declarant under each of the Community Declaration and the Subassociation Declaration and as such has succeeded to all of the right, title and interest of Mission as Declarant under each of the Community Declaration and the Subassociation Declaration.

B. Shea and Englewood together are the Owners of certain real property described hereinafter in this Supplemental Declaration as the Annexed Property, with Shea being the current Owner of that certain portion of the Annexed Property described in Exhibit B attached hereto (the “Shea Property”), and Englewood being the current Owner of that certain portion of the Annexed Property described in Exhibit C attached hereto (the “Englewood Property”).

C. The Annexed Property described in this Supplemental Declaration is a portion of certain real property described as the Annexable Area in the Community Declaration and is a portion of certain real property described as the Business Park Annexable Area under the Subassociation Declaration. The Annexable Area under the Community Declaration is to be subdivided and improved as a planned community to be known as the Highlands Ranch in accordance with the Community Declaration. In furtherance of the Community Declaration, the

Subassociation Declaration and the Development Guide as hereinafter defined, Current Owner and Declarant desire that the Annexed Property be improved, owned and conveyed in accordance with the terms of the Community Declaration and the Subassociation Declaration. **In accordance therewith, Current Owner and Declarant desire that the Owners who own portions of the Annexed Property be subject to the provisions of the Community Declaration, the Subassociation Declaration and this Supplemental Declaration.**

D. Pursuant to Article III of the Community Declaration and Article IX of the Subassociation Declaration, Current Owner and Declarant desire to designate the Annexed Property as a portion of a Delegate District, as a portion of the Community Association Area under the Community Declaration, and as a portion of the Business Park Association Area under the Subassociation Declaration. Current Owner and Declarant further desire to impose certain additional covenants, conditions, restrictions and reservations on the Annexed Property, as hereinafter provided.

NOW, THEREFORE IN ACCORDANCE WITH THE FOREGOING, CURRENT OWNER AND DECLARANT HEREBY DECLARE AS FOLLOWS:

ARTICLE 1
DEFINITIONS

Section 1.1. General. Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this Supplemental Declaration shall have the same meaning as any similarly capitalized terms defined in the Community Declaration or the Subassociation Declaration except that the words "**Privately Owned Site**" as used herein shall mean any Condominium or any lot or parcel of land within the Business Park Association Area, whether or not also within the Community Association Area, which otherwise would constitute a Privately Owned Site as defined in the Community Declaration. The following words and phrases when used in this Supplemental Declaration shall have the meaning hereinafter specified.

Section 1.2. Annexed Property No. 207 __. "**Annexed Property**" shall mean the real property described in Exhibit A attached hereto and incorporated by reference herein. The Annexed Property shall be known as "Annexed Property No. 207 __." The number "207" signifies that the Annexed Property is in Delegate District No. 207. The letter "__" signifies that the Annexed Property is in Assessment Area __ within said Delegate District. The Annexed Property includes all rights and easements, if any, appurtenant to the real property described in Exhibit A attached hereto. The use and enjoyment of any of such rights and easements by any person shall be subject to the terms and provisions of this Supplemental Declaration.

Section 1.3. Business Park Association. "**Business Park Association**" shall mean Highlands Ranch Business Park, Inc., a Colorado nonprofit corporation, its successors and assigns, which has the rights, duties and powers as set forth in the Subassociation Declaration, in the Business Park Association's Articles of Incorporation and Bylaws and herein. The Business Park Association is a "Subassociation" as defined in the Community Declaration.

Section 1.4. Business Park Association Properties. "Business Park Association Properties" shall have the same meaning as set forth in the Subassociation Declaration, which meaning includes any property, areas or easements which may be described as Business Park Association Properties in any subdivision plat applicable to the Business Park Association Area, in this or any other Supplemental Declaration annexing additional property to the Business Park Association Area, or any amendments or supplements thereto, or in any other recorded instrument executed or consented to by Declarant; provided, however, that in any case where Declarant is, at the time a particular Business Park Association Property is so designated, not the owner of such Business Park Association Property (or, if the applicable interest in such Business Park Association Property consists of easement rights therein as opposed to fee simple title thereto, Declarant is not the holder of such easement rights), the recorded instrument in which such Business Park Association Property is designated, in order to be effective, shall (unless and to the extent that such Business Park Association Property is located within the right-of-way for a public street) also be required to be executed or consented to by the owner(s) of such Business Park Association Property (or the holder of such easement rights, as the case may be), which such owner(s) shall have the right, in its or their sole discretion, to determine whether or not to do.

Section 1.5. Community Declaration. "Community Declaration" shall mean the Community Declaration for Highlands Ranch Community Association, Inc. dated September 1, 1981, Recorded September 17, 1981, in Book 421 beginning at Page 924 of the records in the office of the Clerk and Recorder of Douglas County, Colorado, as the same may be amended from time to time.

Section 1.6. Delegate District No. 207. "Delegate District" or "Delegate District No. 207" shall mean the Annexed Property plus any other property within the Annexable Area as defined in the Community Declaration with respect to which one or more Supplemental Declarations shall be Recorded, if at all, pursuant to Section 3.3 of the Community Declaration, declaring such portion to be a portion of Delegate District No. 207. All the property within Delegate District No. 207 shall at all times be within the Business Park Association Area under the Subassociation Declaration; however, the Business Park Association Area may at any time include property within one or more Delegate Districts and may include property not subject to the Community Declaration and therefore not within any Delegate District. The property within the Business Park Association Area which is made subject to the Community Declaration shall be within the Delegate District designated in the Supplemental Declaration annexing such property to the Community Association Area.

Section 1.7. Development Guide. "Development Guide" shall mean the Planned Community District Development Guide for the New Town of Highlands Ranch as approved September 17, 1979, by the Board of County Commissioners of Douglas County, Colorado, Recorded October 25, 1979, in Book 373, beginning at Page 187, in the office of the Clerk and Recorder of Douglas County, Colorado, as the Development Guide exists on the date hereof.

Section 1.8. Related User. "Related User" shall mean guests, customers and invitees of an Owner; employees of an Owner; and occupants, tenants and contract purchasers of the Privately Owned Site of an Owner who claim by, through, or under an Owner.

Section 1.9. Restrictions. "Restrictions" shall mean covenants, conditions, restrictions, limitations, reservations, exceptions and equitable servitudes affecting real property.

Section 1.10. Review Committee. "Review Committee" shall mean the Review Committee established under Article VII of the Subassociation Declaration.

Section 1.11. Subassociation Declaration. "Subassociation Declaration" shall mean the Subassociation Declaration for Highlands Ranch Business Park, Inc., dated February 14, 1989, recorded February 21, 1989 in Book 841 at Page 1115 of the records in the office of the Clerk and Recorder of Douglas County, Colorado, as amended by the Amendment of Subassociation Declaration for Highlands Ranch Business Park, Inc., dated June 7, 1990, recorded June 11, 1990, in Book 916 at Page 49 in the office of the Clerk and Recorder of Douglas County, Colorado, and as the same may be further amended from time to time.

ARTICLE 2

ANNEXATION TO COMMUNITY ASSOCIATION AREA AND BUSINESS PARK ASSOCIATION AREA

Section 2.1. Declaration. Current Owner, as the present owners thereof, with the consent of Declarant as hereinafter provided, for themselves, their successors and assigns, hereby declare that the Annexed Property shall be part of the Community Association Area under the Community Declaration and the Business Park Association Area under the Subassociation Declaration, and, in accordance therewith, the Annexed Property hereby shall be subject to the Community Declaration and the Subassociation Declaration. In accordance with the foregoing, the Annexed Property, and each part thereof, shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the Restrictions and other provisions set forth in the Community Declaration, the Subassociation Declaration and this Supplemental Declaration, for the duration thereof.

Section 2.2. General Plan. This Supplemental Declaration is hereby established as a part of, pursuant to and in furtherance of a common and general plan in accordance with the Community Declaration, the Subassociation Declaration and the Development Guide for the improvement and ownership of the Annexed Property and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Annexed Property.

Section 2.3. Equitable Servitudes. The Restrictions set forth in the Community Declaration, the Subassociation Declaration and this Supplemental Declaration are hereby imposed as equitable servitudes upon the Annexed Property, including, without limitation, upon each Privately Owned Site and any Community Association Properties and any Business Park Association Properties within the Annexed Property, as a servient tenement, for the benefit of

each and every other Privately Owned Site, Community Association Property, Business Park Association Property or other parcel of property within the Community Association Area and each and every property within the Business Park Association Area, as the dominant tenements.

Section 2.4. Restrictions Appurtenant. The Restrictions set forth in the Community Declaration, the Subassociation Declaration and this Supplemental Declaration shall run with, inure to the benefit of, and be binding upon: (a) all of the Annexed Property; (b) each Privately Owned Site, if any, located within the Annexed Property; and (c) any Community Association Property and Business Park Association Properties located within the Annexed Property. The Restrictions set forth in the Community Declaration, the Subassociation Declaration and this Supplemental Declaration which are imposed upon the Annexed Property by this Supplemental Declaration shall inure to the benefit of: (i) the Annexed Property, (ii) Declarant and its successors and assigns, (iii) the Community Association and its successors and assigns, (iv) the Business Park Association and its successors and assigns, (v) each Member of the Community Association and any property within the Community Association Area owned by such a Member, (vi) each Member of the Business Park Association and any property within the Business Park Association Area owned by such a Member, and (vii) all Persons having or hereafter acquiring any right, title or interest in all or any portion of the Annexed Property and their heirs, personal representatives, successors and assigns.

Section 2.5. Designation of Annexed Property under Subassociation Declaration. The Annexed Property is hereby designated as a Common Access Area under and for the purposes of the Subassociation Declaration. Consequently, pursuant to Section 2.9 of the Subassociation Declaration: (a) all of the lots or parcels which are provided access by the Annexed Property, including, without limitation the Shea Property and the Englewood Property, and each portion thereof, and the street improvements, including, without limitation, paving, curbs, gutters and landscaping, to be constructed thereon (the “**Street Improvements**”) by Shea, at its expense, may be utilized for purposes of access to and from each such lot or parcel and adjacent public streets, including, without limitation, Lucent Boulevard and Sargent Chris Falkel Drive; and (b) after the initial installation of the Street Improvements by Shea, the responsibility and expense of management, operation, care, maintenance, repair and replacement of the Annexed Property, as a Common Access Area, and of the Street Improvements, shall be borne and performed by the Business Park Association in accordance with the terms and conditions set forth in the Subassociation Declaration. The Annexed Property is also hereby designated as a part of the Common Area, and as such, also constitutes a part of the Business Park Association Properties, under the Subassociation Declaration. Consequently, the Annexed Property and the Street Improvements and all other improvements now or hereafter located thereon, shall be subject to, and shall be owned, used, occupied, maintained, altered and improved only in a manner consistent with, the Restrictions applicable to the Common Access Areas, the Common Area and the Business Park Association Properties set forth in the Subassociation Declaration.

Section 2.6. No Community Association Property. No portion of the Annexed Property is or shall be Community Association Property as defined in the Community Declaration.

Section 2.7. Delegate District. Pursuant to Section 3.3 of the Community Declaration, the Annexed Property is hereby established as a portion of Delegate District No. 207 of the Community Association. As further provided in the Community Declaration, the Owners of Privately Owned Sites in this Delegate District shall collectively be entitled to one Delegate to the Community Association.

Section 2.8. Subassociation. The Business Park Association shall constitute the Subassociation, as defined in the Community Declaration, for the Delegate District in which the Annexed Property is located.

Section 2.9. Annexed Property Constitutes Assessment Area. The Annexed Property is hereby declared to be a separate Assessment Area under the Community Declaration and is hereby designated as Assessment Area __ within Delegate District No. 207. As provided in Section 8.28 of the Community Declaration and Section 5.5 of the Subassociation Declaration, the Common Assessments for the Annexed Property shall commence as to each Privately Owned Site, if any, in the Annexed Property as of the earlier of: (a) the first day of the first month following the month in which the first Recordation occurs of a deed for the sale by Declarant to a Purchaser of a Privately Owned Site within the Annexed Property, or (b) as of the first day of the first month following the month in which the commencement date occurs of the lease term of a lease by Declarant to a lessee of a Privately Owned Site within the Annexed Property.

Section 2.10. No Participation in Recreation Cost Center. The Owners of the Privately Owned Sites, if any, constituting the Annexed Property shall not be entitled to use, and shall not be subject to Recreation Function Common Assessments for, any Recreation Cost Center established pursuant to the Community Declaration or any Supplemental Declaration.

ARTICLE 3

COMMUNITY ASSOCIATION PROPERTIES AND **BUSINESS PARK ASSOCIATION PROPERTIES**

Section 3.1. Business Park Association Properties. The Business Park Association Properties located within the Annexed Property, if any, shall be used for the purposes provided for under the Subassociation Declaration and for such additional purposes as may from time to time be deemed reasonably necessary in the discretion of the Declarant or of the Board of Directors of the Business Park Association; provided, however, that Declarant's right to specify any such additional purpose for use of the Business Park Association Properties located within the Annexed Property shall terminate upon the expiration of the period of Declarant's Special Membership under the Subassociation Declaration.

Section 3.2. Rights of Entry. In furtherance of Article I of the Subassociation Declaration, Declarant and the Business Park Association shall have, in the event of any "Emergency Situation," as hereinafter defined, threatening the Business Park Association Properties or any portion thereof, a right of entry in and upon any Improvement (other than the interior of any building) located in the Annexed Property for the purpose of inspecting and

taking whatever reasonable corrective action may be deemed reasonably necessary under the circumstances.

Section 3.3. Easements Deemed Appurtenant. The easements and rights herein granted, created and reserved shall be binding upon the Annexed Property, including, without limitation, each Privately Owned Site and any Business Association Properties in the Annexed Property and the Owner of each such Privately Owned Site or Business Park Association Properties located therein, and shall inure to the benefit of the party to whose benefit such easements and rights were granted, the Business Park Association, and Declarant.

ARTICLE 4 **USE RESTRICTIONS**

Section 4.1. General. All of the Annexed Property shall be held, used and enjoyed subject to the Restrictions in the Community Declaration and the Subassociation Declaration, as well as the following Restrictions, except for the exemptions of Declarant set forth in the Community Declaration and the Subassociation Declaration, which are hereby incorporated into this Supplemental Declaration as if set forth in full herein. To the extent that any of the following Restrictions are more restrictive than any similar Restrictions in the Community Declaration or the Subassociation Declaration, the Restrictions in this Supplemental Declaration shall control. The strict application of the following Restrictions in any specific case may be modified or waived in whole or in part by the Review Committee, if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Review Committee.

Section 4.2. Provisions in Development Guide. The provisions contained in the Development Guide, as the same presently exists, presently applicable to the Annexed Property shall apply to the Annexed Property. Any Restriction contained in a deed or lease from Declarant or contained in the Community Declaration, in the Subassociation Declaration or in this Supplemental Declaration which is more restrictive than any provision contained in the Development Guide shall supersede any such provision contained in the Development Guide.

Section 4.3. Restrictions in Community Declaration. The Restrictions contained in the Community Declaration shall apply to the Annexed Property, including, but not limited to, the General Restrictions Applicable to Property set forth in Article IX of the Community Declaration.

Section 4.4. Other Uses Authorized by Review Committee. Notwithstanding the foregoing, the Review Committee under the Subassociation Declaration may, with the prior written consent of Declarant for so long as Declarant owns property in the Annexable Area as defined in the Community Declaration, authorize any other use of the Annexed Property which is not otherwise precluded by law. Approvals and disapprovals by the Review Committee and by Declarant of specific uses not otherwise permitted herein shall be based upon analysis of the anticipated effect of such operations or uses upon other Privately Owned Sites in the Annexed

Property, upon other real property in the vicinity of the Annexed Property, and upon the occupants thereof, but shall be in the sole discretion of the Review Committee and of Declarant.

Section 4.5. Authority of Review Committee to Regulate Operations. The Review Committee may, in its discretion, adopt reasonable regulations governing operations or uses on or within the Annexed Property. Such regulations may include, without limitation, reasonable restrictions on activities permitted outside of buildings and reasonable restrictions on matters which have an external effect, including, without limitation, matters which can be seen, heard or otherwise sensed or felt outside the boundaries of a Privately Owned Site. The Owner of a Privately Owned Site and any Related User shall be obligated to comply with any such regulations adopted by the Review Committee.

ARTICLE 5

MISCELLANEOUS PROVISIONS

Section 5.1. Term of Supplemental Declaration. Unless amended as herein provided, each provision contained in this Supplemental Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation shall continue and remain in full force and effect for the period of twenty-one (21) years following the death of the survivor of John Kilrow, Peter A. Culshaw, and Michael A. Brown and the now living children of said persons, or until this Supplemental Declaration is terminated as hereinafter provided, whichever first occurs. Unless amended as herein provided, all other provisions or Restrictions contained in this Supplemental Declaration shall be effective until December 31, 2039, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by first obtaining the written consent of the Community Association and the Business Park Association and then obtaining the vote, by written ballot, of Members holding at least two-thirds (2/3) of the voting power of Members of the Business Park Association present in person or by proxy and voting at a duly constituted meeting of the Business Park Association. The termination of this Supplemental Declaration shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Business Park Association stating that this Supplemental Declaration has been terminated with the written consent of the Community Association and the Business Park Association and by the vote of Members as provided herein.

Section 5.2. Amendment of Supplemental Declaration by Members. Except as otherwise provided in this Supplemental Declaration, any provisions or Restrictions contained in this Supplemental Declaration may be amended or repealed at any time and from time to time by first obtaining the written consent of the Community Association and the Business Park Association and then obtaining the approval of the amendment or repeal by Members holding at least two-thirds (2/3) of the voting power of the Business Park Association present in person or by proxy and voting at a duly constituted meeting of the Business Park Association and, during the Appointment Period, as defined in the Community Declaration, by also obtaining, prior to seeking approval of Members, the written consent of Declarant. The approval of any such amendment or repeal shall be evidenced by the certification by the President or a Vice President

and the Secretary or an Assistant Secretary of the Business Park Association of the votes of the Members of the Business Park Association. The amendment or repeal shall be effective upon the Recordation in the office of the Clerk and Recorder of Douglas County, Colorado, of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Business Park Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved in writing by the Community Association and the Business Park Association, approved by the appropriate Members and has been certified as set forth above and, if the amendment or repeal occurs during the Appointment Period, as defined in the Community Declaration, has been approved, in writing, by Declarant.

Section 5.3. Withdrawal of Annexed Property. The Annexed Property may be withdrawn from coverage of this Supplemental Declaration in accordance with the provisions of Section 3.5 of the Community Declaration and Section 9.4 of the Subassociation Declaration.

Section 5.4. Notices. Any notice permitted or required to be given under this Supplemental Declaration shall be in writing and may be given either personally or by mail, telephone or telegraph. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Community Association and the Business Park Association for the purpose of service of such notice, or to the Privately Owned Site of such Person if no address has been given to the Community Association and the Business Park Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Community Association and the Business Park Association.

Section 5.5. Persons Entitled to Enforce Declaration. The Community Association and the Business Park Association, acting by authority of their respective Boards, the Review Committee, Declarant and any Member of the Community Association or the Business Park Association shall have the right to enforce any or all of the provisions or restrictions contained in this Supplemental Declaration against any property within the Annexed Property and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as any action to enjoin any violation of any provision of this Supplemental Declaration.

Section 5.6. Violations Constitute a Nuisance. Any violation of any of the provisions or Restrictions contained in this Supplemental Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Supplemental Declaration.

Section 5.7. Enforcement by Self Help. Declarant, the Review Committee, the Community Association, the Business Park Association or any authorized agent of any of them may enforce, by self help, any of the provisions, covenants, conditions, restrictions or equitable servitudes contained in this Supplemental Declaration, provided such self help is (except in the event of an "Emergency Situation," as hereinafter defined) preceded by Notice and Hearing as set forth in the Bylaws for the Community Association or the Business Park Association, as the

case may be. An "**Emergency Situation**" shall mean a situation in which prompt action is required to be taken in order to prevent or to reduce the effect of any imminent or threatened damage or harm to person or property, to preserve property or to prevent or minimize the effects of any negative impacts on surrounding property from any condition existing on the property upon which the entry is to occur. Any such self help by Declarant, the Review Committee, the Community Association, the Business Park Association or any authorized agent of any of them may include entering upon the Annexed Property and taking such actions as Declarant, the Review Committee, the Community Association, the Business Park Association or any authorized agent of any of them, as the case may be, determines are necessary or desirable to cause compliance with this Supplemental Declaration, all without liability to the Owner of the affected property and without any further notice or opportunity to cure afforded to such Owner, in which case Declarant, the Review Committee, the Community Association or the Business Park Association, as the case may be, shall be entitled to recover from such Owner, in addition to all other amounts to which Declarant, the Review Committee, the Community Association or the Business Park Association, as the case may be, shall be entitled, all costs and expenses incurred by Declarant, the Review Committee, the Community Association, the Business Park Association or any authorized agent of any of them, as the case may be, in so doing. The Community Association and the Business Park Association shall have the right to levy, or the Review Committee shall have the right to require the Community Association or the Business Park Association to levy, a Reimbursement Assessment against such Owner and his Privately Owned Site for all such costs and expenses incurred by the Community Association, the Business Park Association, the Review Committee or any authorized agent of any of them, as the case may be. Declarant hereby creates and reserves a non-exclusive easement for the benefit of each of Declarant, the Review Committee, the Community Association and the Business Park Association over and across each Privately Owned Site within the Annexed Property as shall reasonably be necessary for the Declarant, the Review Committee, the Community Association or the Business Park Association, or any authorized agent of any of them, as the case may be, to exercise its rights under this Section.

Section 5.8. Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Annexed Property is hereby declared to be a violation of this Supplemental Declaration and shall be subject to any and all of the enforcement procedures set forth in this Supplemental Declaration.

Section 5.9. Remedies Cumulative. Each remedy provided under this Supplemental Declaration is cumulative and not exclusive.

Section 5.10. Costs and Attorneys' Fees. In any action or proceeding under this Supplemental Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorneys' fees.

Section 5.11. Limitations on Liability. The Community Association, the Business Park Association, their Boards of Directors, the Review Committee, Declarant and any member,

agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

Section 5.12. No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Current Owner, Declarant or any of their agents or employees in connection with any portion of the Annexed Property, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 5.13. Liberal Interpretation. The provisions of this Supplemental Declaration shall be liberally construed as a whole to effectuate the purpose of this Supplemental Declaration.

Section 5.14. Governing Law. This Supplemental Declaration shall be construed and governed under the laws of the State of Colorado.

Section 5.15. Severability. Each of the provisions of this Supplemental Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 5.16. Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 5.17. Captions for Convenience. The titles, headings and captions used in this Supplemental Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Supplemental Declaration.

Section 5.18. Successors and Assigns of Declarant. A party shall be deemed a "successor" or an "assign" of Shea Homes Limited Partnership ("SHLP") as Declarant under this Supplemental Declaration only if specifically designated in a duly recorded instrument as a successor or assign of SHLP as Declarant under this Supplemental Declaration or if specifically designated in a duly recorded instrument as a successor or assign of SHLP as Declarant generally under the Community Declaration or the Subassociation Declaration (as opposed to designation as a successor or assign of SHLP under certain provisions of the Community Declaration or the Subassociation Declaration or with respect to only certain property made subject to the Community Declaration or the Subassociation Declaration). However, a successor to SHLP by consolidation or merger shall automatically be deemed a successor and assign of SHLP as Declarant under this Supplemental Declaration.

SIGNATURE PAGE
FOR
SUPPLEMENTAL DECLARATION
FOR
ANNEXED PROPERTY NO. 207__
OF
HIGHLANDS RANCH COMMUNITY ASSOCIATION, INC.
AND
HIGHLANDS RANCH BUSINESS PARK, INC.

(Delegate District No. 207 - Assessment Area __)

(Highlands Ranch Filing No. 156, 1st Amendment – Private Street)

IN WITNESS WHEREOF, Shea and Englewood have executed this Supplemental Declaration as of the day and year first above written.

SHEA:

CENTRAL PARK AT HIGHLANDS RANCH,
LLC, a Colorado limited liability company

By: Shea Properties Management Company, Inc.,
a Delaware corporation, its Manager

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ENGLEWOOD:

ENGLEWOOD/MCLELLAN RESERVOIR
FOUNDATION, a Colorado nonprofit corporation

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____ as _____ and _____ as _____ of Shea Properties Management Company, Inc., a Delaware corporation, as Manager of CENTRAL PARK AT HIGHLANDS RANCH, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____ as _____ of ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

**EXHIBIT A
TO
SUPPLEMENTAL DECLARATION
FOR
ANNEXED PROPERTY NO. 207__
OF
HIGHLANDS RANCH COMMUNITY ASSOCIATION, INC.
AND
HIGHLANDS RANCH BUSINESS PARK, INC.**

(Delegate District No. 207 - Assessment Area __)

(Highlands Ranch Filing No. 156, 1st Amendment – Private Street)

Description of Annexed Property

The private roadway and private street shown and created, and which is labeled as _____ Street and as being subject to Specific Purpose Easement "____," as more particularly provided, on the plat for Highlands Ranch Filing No. 156, 1st Amendment, recorded _____, 2016, at Reception No. _____ of the Douglas County Records.

**EXHIBIT B
TO
SUPPLEMENTAL DECLARATION
FOR
ANNEXED PROPERTY NO. 207__
OF
HIGHLANDS RANCH COMMUNITY ASSOCIATION, INC.
AND
HIGHLANDS RANCH BUSINESS PARK, INC.**

(Delegate District No. 207 - Assessment Area __)

(Highlands Ranch Filing No. 156, 1st Amendment – Private Street)

Description of Shea Property

Those portions of the Annexed Property that were not previously contained within Highlands Ranch Filing No. 156, County of Douglas, State of Colorado, according to the plat thereof recorded February 20, 2013, at Reception No. 2013014711.

EXHIBIT C
TO
SUPPLEMENTAL DECLARATION
FOR
ANNEXED PROPERTY NO. 207__
OF
HIGHLANDS RANCH COMMUNITY ASSOCIATION, INC.
AND
HIGHLANDS RANCH BUSINESS PARK, INC.

(Delegate District No. 207 - Assessment Area __)

(Highlands Ranch Filing No. 156, 1st Amendment – Private Street)

Description of Englewood Property

Those portions of the Annexed Property that were previously contained within Highlands Ranch Filing No. 156, County of Douglas, State of Colorado, according to the plat thereof recorded February 20, 2013 at Reception No. 2013014711.

COUNCIL COMMUNICATION

Meeting Date: March 14, 2016	Agenda Item: 12bi	Subject: Selection of an Executive Search Firm for the recruitment of City Attorney
Initiated By: Human Resources	Staff Source: Assistant City Manager Murphy Robinson	

PREVIOUS COUNCIL ACTION

On February 10, 2016, City Council interviewed three Executive Search Firms to assist Council in recruiting a City Attorney.

RECOMMENDED ACTION

Approve a motion approving Strategic Government Resources as the Executive Search Firm for the recruitment of a City Attorney.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In 2014 City Council used the assistance of an Executive Search Firm to help facilitate the recruitment of a City Manager.

FINANCIAL IMPACT

The maximum price of the project is not to exceed \$27,000. This will require a supplemental appropriation at mid-year.

LIST OF ATTACHMENTS

Professional Services Agreement



PROFESSIONAL SERVICES AGREEMENT

Contract Number PSA/16-02 Executive Recruitment for City Attorney
\$18,500 for Services and \$8,500 for Expenses, total amount not to exceed \$27,000

This Professional Services Agreement (the "Agreement") is made as of this ____ day of _____, 2016, (the "Effective Date") by and between Strategic Government Resources (SGR), a _____ corporation ("Consultant"), and The City of Englewood, Colorado, a municipal corporation organized under the laws of the State of Colorado ("City").

City desires that Consultant, from time to time, provide certain consulting services, systems integration services, data conversion services, training services, and/or related services as described herein, and Consultant desires to perform such services on behalf of City on the terms and conditions set forth herein.

In consideration of the foregoing and the terms hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Definitions. The terms set forth below shall be defined as follows:

(a) "Intellectual Property Rights" shall mean any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (1) rights associate with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (2) trademark and trade name rights and similar rights, (3) trade secret rights, (4) patents, designs, algorithms and other industrial property rights, (5) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (6) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

(b) "Work Product" shall mean all patents, patent applications, inventions, designs, mask works, processes, methodologies, copyrights and copyrightable works, trade secrets including confidential information, data, designs, manuals, training materials and documentation, formulas, knowledge of manufacturing processes, methods, prices, financial and accounting data, products and product specifications and all other Intellectual Property Rights created, developed or prepared, documented and/or delivered by Consultant, pursuant to the provision of the Services.

2. Statements of Work. During the term hereof and subject to the terms and conditions contained herein, Consultant agrees to provide, on an as requested basis, the consulting services, systems integration services, data conversion services, training services, and related services (the "Services") as further described in Schedule A (the "Statement of Work") for City, and in such additional Statements of Work as may be executed by each of the parties hereto from

time to time pursuant to this Agreement. Each Statement of Work shall specify the scope of work, specifications, basis of compensation and payment schedule, estimated length of time required to complete each Statement of Work, including the estimated start/finish dates, and other relevant information and shall incorporate all terms and conditions contained in this Agreement

3. Performance of Services.

(a) **Performance.** Consultant shall perform the Services necessary to complete all projects outlined in a Statement of Work in a timely and professional manner consistent with the specifications, if any, set forth in the Statement of Work, and in accordance with industry standards. Consultant agrees to exercise the highest degree of professionalism, and to utilize its expertise and creative talents in completing the projects outlined in a Statement of Work.

(b) **Delays.** Consultant agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Consultant's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement or any Statement of Work. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

(c) **Discrepancies.** If anything necessary for the clear understanding of the Services has been omitted from the Agreement specifications or it appears that various instructions are in conflict, Consultant shall secure written instructions from City's project director before proceeding with the performance of the Services affected by such omissions or discrepancies.

4. Invoices and Payment. Unless otherwise provided in a Statement of Work,

City shall pay the amounts agreed to in a Statement of Work within thirty (30) days following the acceptance by City of the work called for in a Statement of Work by City. Acceptance procedures shall be outlined in the Statement of Work. If City disputes all or any portion of an invoice for charges, then City shall pay the undisputed portion of the invoice by the due date and shall provide the following notification with respect to the disputed portion of the invoice. City shall notify Consultant as soon as possible of the specific amount disputed and shall provide reasonable detail as to the basis for the dispute. The parties shall then attempt to resolve the disputed portion of such invoice as soon as possible. Upon resolution of the disputed portion, City shall pay to Consultant the resolved amount.

5. Taxes. City is not subject to taxation. No federal or other taxes (excise, luxury, transportation, sales, etc.) shall be included in quoted prices. City shall not be obligated to pay or reimburse Consultant for any taxes attributable to the sale of any Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by Consultant. Upon written notification by City and subsequent verification by Consultant, Consultant shall reimburse or credit, as applicable, City in a timely manner, for any and all taxes erroneously paid by City. City shall provide Consultant with, and Consultant shall accept in good faith, resale, direct pay, or other exemption certificates, as applicable.

6. Out of Pocket Expenses. Consultant shall be reimbursed only for expenses which are expressly provided for in a Statement of Work or which have been approved in advance in writing by City, provided Consultant has furnished such documentation for authorized expenses as City may reasonably request.

7. Audits. Consultant shall provide such employees and independent auditors and inspectors as City may designate with

reasonable access to all sites from which Services are performed for the purposes of performing audits or inspections of Consultant's operations and compliance with this Agreement. Consultant shall provide such auditors and inspectors any reasonable assistance that they may require. Such audits shall be conducted in such a way so that the Services or services to any other customer of Consultant are not impacted adversely.

8. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall continue unless this Agreement is terminated as provided in this Section 8.

(a) Convenience. City may, without cause and without penalty, terminate the provision of Services under any or all Statements of Work upon thirty (30) days prior written notice. Upon such termination, City shall, upon receipt of an invoice from Consultant, pay Consultant for Services actually rendered prior to the effective date of such termination. Charges will be based on time expended for all incomplete tasks as listed in the applicable Statement of Work, and all completed tasks will be charged as indicated in the applicable Statement of Work.

(b) No Outstanding Statements of Work. Either party may terminate this Agreement by providing the other party with at least thirty (30) days prior written notice of termination if there are no outstanding Statements of Work.

(c) Material Breach. If either party materially defaults in the performance of any term of a Statement of Work or this Agreement with respect to a specific Statement of Work (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting party may terminate this Agreement or any or all outstanding Statements of Work by providing ten (10) days prior written notice of termination to the defaulting party.

(d) Bankruptcy or Insolvency. Either party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency laws; or (4) files a petition seeking relief or reorganization under any bankruptcy or insolvency laws is filed against that other party and is not dismissed within sixty (60) days after it was filed.

(e) TABOR. The parties understand and acknowledge that each party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement to the contrary, all payment obligations of City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of City's current fiscal period ending upon the next succeeding December 31. Financial obligations of City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

(f) Return of Property. Upon termination of this Agreement, both parties agree to return to the other all property (including any Confidential Information, as defined in Section 11) of the other party that it may have in its possession or control.

9. City Obligations. City will provide timely access to City personnel, systems and information required for Consultant to perform its obligations hereunder. City shall provide to Consultant's employees performing its obligations hereunder at City's premises, without charge, a reasonable work environment in compliance with all applicable laws and regulations, including office space, furniture, telephone service, and reproduction, computer, facsimile, secretarial and other necessary equipment, supplies, and services. With respect to all third party hardware or software operated by or on behalf of City, City shall, at no expense to Consultant, obtain all consents, licenses and sublicenses necessary for Consultant to perform under the Statements of Work and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses.

10. Staff. Consultant is an independent consultant and neither Consultant nor Consultant's staff is, or shall be deemed to be employed by City. City is hereby contracting with Consultant for the Services described in a Statement of Work and Consultant reserves the right to determine the method, manner and means by which the Services will be performed. The Services shall be performed by Consultant or Consultant's staff, and City shall not be required to hire, supervise or pay any assistants to help Consultant perform the Services under this Agreement. Except to the extent that Consultant's work must be performed on or with City's computers or City's existing software, all materials used in providing the Services shall be provided by Consultant.

11. Confidential Information.

(a) Obligations. Each party hereto may receive from the other party information which relates to the other party's business, research, development, trade secrets or business affairs ("Confidential Information"). Subject to the provisions and exceptions set forth in the Colorado Open Records Act, CRS Section 24-72-101 et. seq., each party shall

protect all Confidential Information of the other party with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Without limiting the generality of the foregoing, each party hereto agrees not to disclose or permit any other person or entity access to the other party's Confidential Information except such disclosure or access shall be permitted to an employee, agent, representative or independent consultant of such party requiring access to the same in order to perform his or her employment or services. Each party shall insure that their employees, agents, representatives, and independent consultants are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section 11. Further, each party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the ownership of any part of such Confidential Information by the other party. A party hereto shall undertake to immediately notify the other party in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall restrict either party with respect to information or data identical or similar to that contained in the Confidential Information of the other party but which (1) that party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that party; (3) is subsequently furnished rightfully to that party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law, provided that the disclosing party will exercise reasonable efforts to notify the other party prior to disclosure.

(b) **Know-How.** For the avoidance of doubt neither City nor Consultant shall be prevented from making use of know-how and principles learned or experience gained of a non-proprietary and non-confidential nature.

(c) **Remedies.** Each of the parties hereto agree that if any of them, their officers, employees or anyone obtaining access to the Confidential Information of the other party by, through or under them, breaches any provision of this Section 11, the non-breaching party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations and benefits which the breaching party, its officers or employees directly or indirectly realize or may realize as a result of or growing out of, or in connection with any such breach. In addition to, and not in limitation of the foregoing, in the event of any breach of this Section 11, the parties agree that the non-breaching party will suffer irreparable harm and that the total amount of monetary damages for any such injury to the non-breaching party arising from a violation of this Section 11 would be impossible to calculate and would therefore be an inadequate remedy at law. Accordingly, the parties agree that the non-breaching party shall be entitled to temporary and permanent injunctive relief against the breaching party, its officers or employees and such other rights and remedies to which the non-breaching party may be entitled to at law, in equity or under this Agreement for any violation of this Section 11. The provisions of this Section 11 shall survive the expiration or termination of this Agreement for any reason.

12. Project Managers. Each party shall designate one of its employees to be its Project Manager under each Statement of Work, who shall act for that party on all matters under the Statement of Work. Each party shall notify the other in writing of any replacement of a Project Manager. The Project Managers for each Statement of Work shall meet as often as either one requests to review the status of the Statement of Work.

13. Warranties.

(a) **Authority.** Consultant represents and warrants that: (1) Consultant has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (2) the execution of this Agreement by Consultant, and the performance by Consultant of its obligations and duties hereunder, do not and will not violate any agreement to which Consultant is a party or by which it is otherwise bound under any applicable law, rule or regulation; (3) when executed and delivered by Consultant, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (4) Consultant acknowledges that City makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement

(b) **Service Warranty.** Consultant warrants that its employees and consultants shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

(c) **Personnel.** Unless a specific number of employees is set forth in the Statement of Work, Consultant warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement or as set forth in the Statement of Work. During the course of performance of Services, City may, for any or no reason, request replacement of an employee or a proposed employee. In such event, Consultant shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. Consultant shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies.

(d) Compensation and Benefits. Consultant shall provide for and pay the compensation of employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Consultant or to any employee for Consultant's failure to perform its compensation, benefit, or tax obligations. Consultant shall indemnify, defend and hold City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

14. Indemnification.

(a) Consultant Indemnification. Consultant shall indemnify, defend and hold harmless City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing (the "City Indemnitees") from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable fees and disbursements of legal counsel and accountants), bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature, suffered or incurred by a City Indemnitee directly or indirectly arising from or related to: (1) any negligent or intentional act or omission by Consultant or its representatives in the performance of Consultant's obligations under this Agreement, or (2) any material breach in a representation, warranty, covenant or obligation of Consultant contained in this Agreement.

(b) Infringement. Consultant will indemnify, defend, and hold City harmless from all Indemnifiable Losses arising from any third party claims that any Work Product or methodology supplied by Consultant infringes or misappropriates any Intellectual Property rights of any third party; provided, however,

that the foregoing indemnification obligation shall not apply to any alleged infringement or misappropriation based on: (1) use of the Work Product in combination with products or services not provided by Consultant to the extent that such infringement or misappropriation would have been avoided if such other products or services had not been used; (2) any modification or enhancement to the Work Product made by City or anyone other than Consultant or its sub-consultants; or (3) use of the Work Product other than as permitted under this Agreement.

(c) Indemnification Procedures. Notwithstanding anything else contained in this Agreement, no obligation to indemnify which is set forth in this Section 14 shall apply unless the party claiming indemnification notifies the other party as soon as practicable to avoid any prejudice in the claim, suit or proceeding of any matters in respect of which the indemnity may apply and of which the notifying party has knowledge and gives the other party the opportunity to control the response thereto and the defense thereof; provided, however, that the party claiming indemnification shall have the right to participate in any legal proceedings to contest and defend a claim for indemnification involving a third party and to be represented by its own attorneys, all at such party's cost and expense; provided further, however, that no settlement or compromise of an asserted third-party claim other than the payment/money may be made without the prior written consent of the party claiming indemnification.

(d) Immunity. City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to City, its officers, or its employees.

15. Insurance.

(a) **Requirements.** Consultant agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance during the term of this Agreement:

(1) The Consultant shall comply with the Workers' Compensation Act of Colorado and shall provide compensation insurance to protect the City from and against any and all Workers' Compensation claims arising from performance of the work under this contract. Workers' Compensation insurance must cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, as well as the Employers' Liability within the minimum statutory limits.

(2) Commercial General Liability Insurance and auto liability insurance (including contractual liability insurance) providing coverage for bodily injury and property damage with a combined single limit of not less than three million dollars (\$3,000,000) per occurrence.

(3) Professional Liability/Errors and Omissions Insurance covering acts, errors and omissions arising out of Consultant's operations or Services in an amount not less than one million dollars (\$1,000,000) per occurrence.

(4) Employee Dishonesty and Computer Fraud Insurance covering losses arising out of or in connection with any fraudulent or dishonest acts committed by Consultant personnel, acting alone or with others, in an amount not less than one million dollars (\$1,000,000) per occurrence.

(b) **Approved Companies.** All such insurance shall be procured with such insurance companies of good standing, permitted to do business in the country, state or territory where the Services are being performed.

(c) **Certificates.** Consultant shall provide City with certificates of insurance

evidencing compliance with this Section 15 (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect. Certificates of insurance will list the City of Englewood as an additional insured. Each certificate of insurance shall provide that the issuing company shall not cancel, reduce, or otherwise materially change the insurance afforded under the above policies unless thirty (30) days' notice of such cancellation, reduction or material change has been provided to City.

16. Rights in Work Product.

(a) **Generally.** Except as specifically agreed to the contrary in any Statement of Work, all Intellectual Property Rights in and to the Work Product produced or provided by Consultant under any Statement of Work shall remain the property of Consultant. With respect to the Work Product, Consultant unconditionally and irrevocably grants to City during the term of such Intellectual Property Rights, a non-exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, to reproduce, create derivative works of, distribute, publicly perform and publicly display by all means now known or later developed, such Intellectual property Rights.

(b) **Know-How.** Notwithstanding anything to the contrary herein, each party and its respective personnel and consultants shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any Confidential Information of the other party.

17. **Relationship of Parties.** Consultant is acting only as an independent consultant and does not undertake, by this Agreement, any Statement of Work or otherwise, to perform any obligation of City, whether regulatory or

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contractual, or to assume any responsibility for City's business or operations. Neither party shall act or represent itself, directly or by implication, as an agent of the other, except as expressly authorized in a Statement of Work.

18. Complete Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the matters covered herein.

19. Applicable Law. Consultant shall comply with all applicable laws in performing Services but shall be held harmless for violation of any governmental procurement regulation to which it may be subject but to which reference is not made in the applicable Statement of Work. This Agreement shall be construed in accordance with the laws of the State of Colorado. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state or federal court situated in Arapahoe County, Colorado and each party hereto consents to jurisdiction and venue before such courts.

20. Scope of Agreement. If the scope of any provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent to and agree that such scope may be judicially modified accordingly and that the whole of such provision of this Agreement shall not thereby fail, but that the scope of such provision shall be curtailed only to the extent necessary to conform to law.

21. Additional Work. After receipt of a Statement of Work, City, with Consultant's consent, may request Consultant to undertake additional work with respect to such Statement of Work. In such event, City and Consultant shall execute an addendum to the Statement of Work specifying such additional work and the compensation to be paid to Consultant for such additional work.

22. Sub-consultants. Consultant may not subcontract any of the Services to be provided hereunder without the prior written consent of City. In the event of any permitted subcontracting, the agreement with such third party shall provide that, with respect to the subcontracted work, such sub-consultant shall be subject to all of the obligations of Consultant specified in this Agreement.

23. Notices. Any notice provided pursuant to this Agreement shall be in writing to the parties at the addresses set forth below and shall be deemed given (1) if by hand delivery, upon receipt thereof, (2) three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested or (3) one (1) day after deposit with a nationally-recognized overnight courier, specifying overnight priority delivery. Either party may change its address for purposes of this Agreement at any time by giving written notice of such change to the other party hereto.

24. Assignment. This Agreement may not be assigned by Consultant without the prior written consent of City. Except for the prohibition of an assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

25. Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the parties hereto and shall not confer any rights upon any person or entity not a party to this Agreement.

26. Headings. The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The recitals set forth on the first page of this Agreement are incorporated into the body of this Agreement. The exhibits referred to throughout this Agreement and any Statement of Work prepared in conformance with this Agreement are incorporated into this Agreement.

27. Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not effect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

28. Force Majeure. If performance by Consultant of any service or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of labor disputes, strikes, acts of God, floods, lightning, severe weather, shortages of materials, rationing, utility or communications failures, earthquakes, war, revolution, civil commotion, acts of public enemies, blockade, embargo or any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect of any governmental or judicial authority or representative of any such government, or any other act whether similar or dissimilar to those referred to in this clause, which are beyond the reasonable control of Consultant, then Consultant shall be excused from such performance to the extent of such prevention, restriction, delay or interference. If the period of such delay exceeds thirty (30) days, City may, without liability, terminate the affected Statement of Work(s) upon written notice to Consultant.

29. Time of Performance. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

30. Permits. Consultant shall at its own expense secure any and all licenses, permits or certificates that may be required by any federal, state or local statute, ordinance or regulation for the performance of the Services under the Agreement. Consultant shall also comply with the provisions of all Applicable Laws in performing the Services under the Agreement. At its own expense and at no cost to City, Consultant shall make any change, alteration or modification that may be necessary to comply with any Applicable Laws

that Consultant failed to comply with at the time of performance of the Services.

31. Media Releases. Except for any announcement intended solely for internal distribution by Consultant or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Consultant, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Consultant or its employees or agents relating to this Agreement or its subject matter, or including the name, trade mark, or symbol of City, shall be coordinated with and approved in writing by City prior to the release thereof. Consultant shall not represent directly or indirectly that any Services provided by Consultant to City has been approved or endorsed by City or include the name, trade mark, or symbol of City on a list of Consultant's customers without City's express written consent.

32. Nonexclusive Market and Purchase Rights. It is expressly understood and agreed that this Agreement does not grant to Consultant an exclusive right to provide to City any or all of the Services and shall not prevent City from acquiring from other suppliers services similar to the Services. Consultant agrees that acquisitions by City pursuant to this Agreement shall neither restrict the right of City to cease acquiring nor require City to continue any level of such acquisitions. Estimates or forecasts furnished by City to Consultant prior to or during the term of this Agreement shall not constitute commitments.

33. Survival. The provisions of Sections 5, 8(g), 10, 11, 13, 14, 16, 17, 19, 23, 25 and 31 shall survive any expiration or termination for any reason of this Agreement.

34. Verification of Compliance with C.R.S. 8-17.5-101 ET.SEQ. Regarding Hiring of Illegal Aliens:

(a) Employees, Consultants and Sub-consultants: Consultant shall not

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knowingly employ or contract with an illegal alien to perform work under this Contract. Consultant shall not contract with a sub-consultant that fails to certify to the Consultant that the sub-consultant will not knowingly employ or contract with an illegal alien to perform work under this Contract. [CRS 8-17.5-102(2)(a)(I) & (II).]

(b) Verification: Consultant will participate in either the E-Verify program or the Department program, as defined in C.R.S. 8-17.5-101 (3.3) and 8-17.5-101 (3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services. Consultant is prohibited from using the E-Verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

(c) Duty to Terminate a Subcontract: If Consultant obtains actual knowledge that a sub-consultant performing work under this Contract knowingly employs or contracts with an illegal alien, the Consultant shall;

(1) notify the sub-consultant and the City within three days that the Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and

(2) terminate the subcontract with the sub-consultant if, within three days of receiving notice required pursuant to this paragraph the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.

(d) Duty to Comply with State Investigation: Consultant shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation by that the Department is undertaking pursuant to C.R.S. 8-17.5-102 (5)

(e) Damages for Breach of Contract: The City may terminate this contract for a breach of contract, in whole or in part, due to Consultant's breach of any section of this paragraph or provisions required pursuant to CRS 8-17.5-102. Consultant shall be liable for actual and consequential damages to the City in addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract under this Paragraph 34.

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed by their authorized officers as of the day and year first above written. 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.

CITY OF ENGLEWOOD, COLORADO

By: _____ Date: _____
(Department Director)

By: _____ Date: _____
(City manager)

By: _____ Date: _____
(Mayor)

ATTEST: _____
City Clerk

Strategic Government Resources
(Consultant Name)

PO Box 11642
Address

Keller TX 76024
City,

By: _____
(Signature)
Amye Brown
(Print Name)

Title: Managing Director

Date: 2/23/2016

STATE OF Texas)
COUNTY OF Tarrant) ss.

On this 23rd day of February, 2016 before me personally appeared _____
Cindy Brown, known to me to be the Managing Director of
Strategic Government Resources, the corporation that executed the within and foregoing
instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation
for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said
instrument.

IN WITNESS WHEREOF, I have hereunto set my hand
above written.

seal the day and year first

My commission expires: 2-20-2016

NOTARY _____



SCHEDULE A

OUTLINE OF STATEMENT OF WORK

1. GENERAL

Statement of Work for Professional Services Agreement between the City of Englewood and Strategic Government Resources (SGR) dated March 14, 2016.

This agreement is not to exceed the proposed project cost of \$18,500 for the Professional Services Fee plus, \$8,500 for the Not-to-Exceed Expenses with a maximum price of \$27,000.

2. NAMES OF PROJECT COORDINATORS

City of Englewood: Jayleen Schell, Human Resources Analyst
Consultant: Douglas B. Thomas, Regional Director

3. SUMMARY OF PURPOSE FOR STATEMENT OF WORK

The City Attorney for the City of Englewood retired on January 8, 2016. The City Council seeks the assistance of a professional executive search firm in filling the vacancy. Council has requested that the selected search firm work in tandem with the Englewood Human Resources Division.

SGR will tailor their full service executive search to meet the specific needs of the City of Englewood utilizing their 5 keys to a successful search. SGR will conduct the following in coordination with City Council and the Human Resources Division; Organizational Inquiry and Analysis, Advertising and Recruitment, Initial Screening and Review, Evaluation of Semifinalist Candidates, and Evaluation of Finalist Candidates, Interview Process, Negotiations and Hiring Process. This process is not to exceed 120 days from the date of this agreement. Finally, Council does have the right to utilize SGR's Post-Hire Team Building Workshop, if they so desire.

4. EQUIPMENT AND PROGRAMMING TO BE PROVIDED BY CITY (IF ANY)

The City will provide necessary conference rooms and A/V equipment, if needed, for SGR and City to conduct in person interviews. The City will also provide appropriate staffing to assist SGR with the coordination of the candidates and interviews.

5. OTHER CONSULTANT RESOURCES

SGR will produce the following Not-to-Exceed Expenses during the course of this agreement, Not-to-Exceed Expenses are capped at \$8,500:

- Graphic Designer for the production of a high quality brochure, flat fee of \$1,500

- Ad placement in appropriate professional publications including trade journals and websites, and related advertising to announce the position. This is billed at actual cost with no markup for overhead
- Online interviews – There is a cost of \$200 for each recorded online interview. SGR will conduct online interviews at the semifinalist stage (up to 12 semifinalists)
- Psychometric Assessments – There is a cost of \$150 per candidate for the DiSC Management Profile. There is a cost of \$150 per candidate for the I-OPT Assessment as well (up to 6 finalists)
- Comprehensive Background Investigation Reports – There is a cost of \$350 per candidate. SGR will conduct Stage 2 media searches on the finalist candidates (up to 6 finalists)
- Travel and related costs for the Project Manager incurred for the benefit of the client – Meals are billed back at a per diem rate of \$10 for breakfast, \$15 for lunch, and \$25 for dinner. Mileage will be reimbursed at the current IRS rate. All other travel-related expenses are billed back at actual cost, with no markup for overhead.

6. DESCRIPTION OF WORK PRODUCT AND DELIVERABLES

Week 1:	Contract executed – March 14, 2016 Outline project Plan, Timeline Individual Interviews with Search Committee (City Council)/ Key Personnel/ Community Leaders (if desired by Council)
Week 2-3	Development of Position Profile Brochure Search Committee Reviews and Approved Brochure
Week 4-7	Ad Placements Accept Applications Email Distribution and marketing of Position Profile
Week 8	Triage and Scoring of Resumes
Week 9	Search Committee Briefing (Slide Presentation)/Select Semifinalists Candidates Complete Questionnaire and Online Interviews Stage 1 Media Searches
Week 10	DELIVERABLE: Semifinalist Briefing Books
Week 11	Search Committee Briefing/Select Finalist Candidates
Week 12-13	Comprehensive Medial Search Stage 2 Comprehensive Background Screening Report Candidates Complete DiSC Management Assessment Candidates Complete I-OPT Assessment
Week 14	DELIVERABLE: Finalist Briefing Books
Week 15	Stakeholder Engagement (if desired) Conduct Interviews

Deliberations
Reference Checks
Negotiations
Announcement/Press Release

***This timeframe is subject to change based on the need and availability of City Council.**

7. SPECIAL TERMS, IF ANY

Candidate Travel – Candidates will be directly reimbursed by the City for travel expenses for an amount not to exceed \$400.

Site Visits to Communities of Finalist Candidates – If desired, the Project Manager will travel to the communities of the finalist candidates to conduct onsite visits. Site visits will be charged at a day rate of \$1,000 per day, plus travel expenses.

Should the City request unusual out of pocket expenses be incurred, said expenses will be reimbursed at the actual cost with no mark up for overhead.

If the City desires any supplemental services not mention in RFP-15-018, an estimate of the cost and hours to be committed will be provided at that time, and no work shall be done without approval. Supplemental services will be billed out oat \$250 per hour.

Once the new City Attorney is selected City Council and/or the new City Attorney have the option of utilizing SGR's Team-Building Workshop at additional cost. The Post-Hire Team Building Workshop will consist of a half-day onsite workshop at the cost of \$4,000, plus travel expenses, and \$150 per person for the I-OPT reports, which include individual Analysis Report, Emotional Impact Management Report, Change Management Report and Team Management Report. Two-Person reports can be ordered for an additional fee of \$50.

8. MODE OF PAYMENT

The City will make payment to SGR within 30 days of receipt of invoice via physical check sent through United States Postal Service

9. PAYMENT SCHEDULE

City will pay Consultant for the work in accordance with the following payment schedule. All payments to SGR are contingent on SGR's satisfying the Deliverables/Milestones set forth in the Payment Schedule. Payments shall be made upon City's written confirmation to Consultant that the Deliverables-Milestones have been satisfied.

Professional fees will be billed in three equal installment during the course of the search. Reimbursable expense items and supplemental services will be billed with each of the three installments, as appropriate.

- The initial installment is billed after the Organizational Inquiry and Analysis is completed and the position profile has been created.

- The second installment is billed when semifinalists are selected.
- The final installment is billed at the conclusion of the search.

10. SCHEDULE AND PERFORMANCE MILESTONES

This schedule sets for the target dates and performance milestones for the preparation and delivery of the Deliverables by Consultant.

Performance Milestone	Responsible Party	Target Date
Semifinalist Briefing Books	SGR	On or before May 23, 2016
Finalist Briefing Books	SGR	On or before June 20, 2016
Selection of Finalist	SGR	On or before July 5, 2016

11. ACCEPTANCE AND TESTING PROCEDURES

12. LOCATION OF WORK FACILITIES

Substantially all of the work will be conducted by Consultant at its regular office located in Keller, Texas.

City will provide the City office space and support as it agrees may be appropriate, at its Civic Center facility.

IN WITNESS WHEREOF, pursuant and in accordance with the Professional Services Agreement between the parties hereto dated _____, 2016, the parties have executed this Statement of Work as of this _____ day of _____, 2016.

CITY OF ENGLEWOOD, COLORADO

By: _____
 (Signature)

 (Print Name)

Title: _____

Date: _____



TO: Mayor Jefferson and City Council

THRU: Eric Keck, City Manager
Michael Flaherty, Deputy City Manager & Interim Community Development Director

FROM: Darren Hollingsworth, Economic Development Manager

DATE: March 14, 2016

SUBJECT: City Loan – Hair Salon

The loan to Cuttin' it Loose Hair Salon is in default and currently has an outstanding balance of \$18,230.55. Mrs. Lemay has not been consistent in making loan payments and has only made one payment to the City in the past 12 months. At the December 7, 2017 study session Mrs. Lemay provided a letter to Council indicating she was working with commercial lenders in an attempt to fully pay off her loan by the end of the year. After failed attempts to refinance her obligation with other lending institutions, Mrs. Lemay is seeking to settle her obligation in full with the City of Englewood by offering a single payment of \$8,000. Please see Mrs. Lemay's attached letter with this request.

The City has 3 options for consideration to address this situation and staff seeks Council consensus on an appropriate course of action.

Option 1: Keep the loan and work out a payment plan. **Analysis:** Mrs. Lemay has not demonstrated a willingness or ability to make payments. Previous attempts by ESBDC to restructure her loan payments to be more affordable also failed and she did not maintain a consistent payment history. Repayment under this option is not likely.

Option 2: Send the loan to an outside collection agency. **Analysis:** Typical loan collections involve a fee of 25% to 30% and may take months to resolve. If the borrower had hidden resources or simply refused to pay the outstanding obligation, this course of action would be a good solution.

Option 3: Accept the \$8,000 settlement as full payment for her obligations with the City of Englewood. **Analysis:** Any portion of this loan which is unpaid will be reported to the IRS as an unpaid loan and the business may be subject to appropriate income taxes.

2/11/2015

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Sabrina Lemay
Cuttn' it Loose
863 Englewood Pkwy
Englewood CO 80123

City of Englewood
1000 Englewood Pkwy
Englewood CO 80110

To whom it may concern

As of today Cuttn' it Loose had been seeking ways to repay the loan held with the city. We have had tried a few different avenues and was unsuccessful. We have been able to secure a loan of \$8000. We would like to offer a settlement of \$8000. We have paid \$13,236 and with this \$8000 we will have a total amount paid of 21,236.09. This amount will be close to paying the original amount of the loan \$26,000 taken from the ESBDC. We understand that we are significantly behind in the payments. We would like to take care of this matter with this settlement.

Cuttn' it Loose has been in Englewood for 7 years. We moved our business this year to lower our operating costs in order to keep our business in Englewood. We hope that you accept this offer and help us to continue to business in Englewood.

Thanks for your consideration in advance

Sincerely

Sabrina Lemay
Owner
Cuttn' it Loose