

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 March 21, 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. Recognition of Englewood's nominees for the Arapahoe County Mayors and Commissioners Youth Award:
 - Kaylee Coker-Mosley, a 12th Grader at Englewood High School
 - Faleena Coleman-Barter, a 12th Grader at Colorado's Finest High School of Choice
 - Tiffany Inman, a 12th Grader at Colorado's Finest High School of Choice
 - Alexis Mahlum, an 8th Grader at Englewood Middle School
 - Jonah Martinez, an 8th Grader at Englewood Middle School
 - Lillian Prisinzano, a 12th Grader at Colorado's Finest High School of Choice
 - Heather Ryan, a 12th Grader at Colorado's Finest High School of Choice
 - Dustin Trevino, an 8th Grader at Englewood Leadership Academy
 - Dejvid Vujic, a 12th Grader at Colorado's Finest High School of Choice
 - Chalyce Williams, a 12th Grader at Colorado's Finest High School of Choice
 - Blythe Wurtz, a 12th Grader at Colorado's Finest High School of Choice
 - b. Brad Coleman, Englewood resident, will address Council regarding Building Department.
 - c. Flora Coleman, Englewood resident, will address Council regarding Building Department.
 - d. Leroy Cockrell, Englewood resident, will address Council regarding Cherokee Kivas.
 - e. William DuChane, Englewood resident, will address Council regarding Cherokee Kivas.

f. Doug Cohn, Englewood resident, will address Council regarding historic preservation.

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. Recognition of the 2016 Englewood/Littleton Community Emergency Response Team-CERT training class graduates.

b. A Proclamation declaring April 15, 2016, Arbor Day.

9. Consent Agenda Items

a. Approval of Ordinances on First Reading.

b. Approval of Ordinances on Second Reading.

i. Council Bill 16 - 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: Deputy Police Chief Jeff Sanchez**

ii. Council Bill 11 - 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**

iii. Council Bill 14 - 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**

iv. Council Bill 13 - 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**

v. Council Bill 15 - 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**

c. Resolutions and Motions.

10. Public Hearing Items.
11. Ordinances, Resolutions and Motions.
 - a. Approval of Ordinances on First Reading.
 - i. Council Bill 17 - The Police Department recommends that City Council adopt a bill for an ordinance which would add a new section (B)(15) to Title 11 of the Englewood Municipal Code – Part 6, Section 705 (2)(a)(b)(c) – Operation of vehicle approached by emergency vehicle - operation of vehicle approaching stationary emergency vehicle. **Staff: Deputy Chief Jeff Sanchez**
 - b. Approval of Ordinances on Second Reading.
 - i. Council Bill 12 - Approving the lease of the EMRF property in PA 81 to Shea Properties, with an option to purchase following a lease term of 20 years. **EMRF Board Member Murphy Robinson**
 - c. Resolutions and Motions.
12. General Discussion.
 - a. Mayor's Choice.
 - i. Notice of a Special Meeting on April 19, 2016, at 6:00 p.m. to review the Comprehensive Plan.
 - b. Council Members' Choice.
13. City Manager's Report.
14. City Attorney's Report.
15. Adjournment.

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

**Regular Session
March 21, 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 7:37 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, Martinez, Russell, Yates
Absent: Council Member Gillit

A quorum was present.

Also present: Acting City Manager Robinson
Acting City Attorney Comer
City Clerk Ellis
Deputy City Clerk Carlile
Director Hargrove, Parks, Recreation and Library
Director Powers, Community Development
Open Space Manager Lee, Parks, Recreation and Library Department
Economic Development Manager Hollingsworth, Community Development
Police Commander Condreay
Technical Support Specialist I Munnell, Information Technology

5. Consideration of Minutes of Previous Session

(a) **COUNCIL MEMBER RUSSELL MOVED, AND COUNCIL MEMBER BARRENTINE SECONDED, TO APPROVE THE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF MARCH 14, 2016.**

Vote results:

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

Motion carried.

6. Recognition of Scheduled Public Comment

(a) Danielle Holly, an Englewood resident, addressed Council regarding the Comprehensive Plan. She also encouraged some kind of outreach to Alta Cherry Hills Apartments to correct their map of the City of Englewood.

(b) Doug Cohn, an Englewood resident, addressed Council regarding historic preservation and his concerns about the Comprehensive Plan.

(c) David Prado, an Englewood resident, addressed Council regarding problems he is having with the City Ditch that is on his property.

7. Recognition of Unscheduled Public Comment

(a) Peggy Lapp, an Englewood resident, spoke out against Marijuana Consumption Clubs in the City of Englewood.

(b) Elaine Hults, an Englewood resident, addressed Council regarding issues she has with the Comprehensive Plan.

Council responded to Public Comment.

8. Communications, Proclamations or appointments.

There were no communications, proclamations or Appointments

9. Consent Agenda

(a) Approval of Ordinances on First Reading

There were no items submitted for approval on first reading.

(b) Approval of Ordinances on Second Reading

There were no items submitted for approval on second reading.

COUNCIL MEMBER YATES MOVED, AND COUNCIL MEMBER RUSSELL SECONDED, TO APPROVE CONSENT AGENDA ITEM 9 (c) (i).

(c) Resolutions and Motions

(i) RESOLUTION NO. 51, SERIES OF 2016

A RESOLUTION AUTHORIZING THE ADOPTION OF THE ENGLEWOOD FINANCIAL POLICIES: STRUCTURALLY BALANCED BUDGET, FUND BALANCE POLICY, DEBT POLICY, INVESTMENT POLICY AND THE AUDIT PROCUREMENT.

Vote results:

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

Nays: None

Absent: Council Member Gillit

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

There were no items submitted for approval on first reading.

(b) Approval of Ordinances on Second Reading

There were no items submitted for approval on second reading.

(c) Resolutions and Motions

(i) Manager Lee presented a recommendation from the Parks, Recreation and Library Department to approve, by resolution, the bid for the construction of Parks Gateway Enhancements Phase I to the Ad Light Group.

COUNCIL MEMBER OLSON MOVED, AND COUNCIL MEMBER BARRENTINE SECONDED, TO APPROVE AGENDA ITEM 11 (c) (i).

RESOLUTION NO. 52, SERIES OF 2016

A RESOLUTION AUTHORIZING A CONTRACT FOR THE PARKS DEPARTMENT GATEWAY ENHANCEMENTS PHASE I PROJECT.

Vote results:

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

Motion carried.

12. General Discussion

(a) Mayor's Choice

(i) An Executive Session to discuss a property interest matter pursuant to C.R.S. Section 24-6-402 (4) (a) was considered.

COUNCIL MEMBER JEFFERSON MOVED, AND COUNCIL MEMBER YATES SECONDED, TO MOVE INTO EXECUTIVE SESSION TO DISCUSS A PROPERTY INTEREST MATTER PURSUANT TO C.R.S. SECTION 24-6-402 (4) (a).

Vote results:

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

Motion carried.

The meeting adjourned into Executive Session at 8:33 p.m.

The meeting reconvened at 9:35 p.m. with Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez present and Council Member Gillit absent.

COUNCIL MEMBER YATES MOVED, AND COUNCIL MEMBER MARTINEZ SECONDED, TO CLOSE THE EXECUTIVE SESSION.

Vote results:

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

Nays: None
Absent: Council Member Gillit

Motion carried.

(ii) An Executive Session to discuss specialized details of security arrangements under C.R.S. Section 24-6-402 (4) (d) was considered.

COUNCIL MEMBER JEFFERSON MOVED, AND COUNCIL MEMBER OLSON SECONDED, TO MOVE INTO EXECUTIVE SESSION TO DISCUSS SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS UNDER C.R.S. SECTION 24-6-402 (4) (d).

Vote results:

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

Motion carried.

The meeting adjourned into Executive Session at 9:37 p.m.

The meeting reconvened at 10:06 p.m. with Council Members Russell, Barrentine, Olson, Jefferson, Yates, Martinez present and Council Member Gillit absent.

COUNCIL MEMBER RUSSELL MOVED, AND COUNCIL MEMBER OLSON SECONDED, TO CLOSE THE EXECUTIVE SESSION.

Vote results:

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

Motion carried.

(b) Council Members' Choice

(i) A motion to approve approximately \$6,720 for six Councilmembers to attend the CML Annual Conference in Vail, Colorado June 21-24, 2016 was considered.

COUNCIL MEMBER OLSON MOVED, AND COUNCIL MEMBER BARRENTINE SECONDED, TO APPROVE APPROXIMATELY \$6,720 FOR SIX COUNCILMEMBERS TO ATTEND THE CML ANNUAL CONFERENCE IN VAIL, COLORADO JUNE 21-24, 2016.

Vote results:

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

Motion carried.

(ii) A resolution approving the renewal of Scientific and Cultural Facilities District was considered.

COUNCIL MEMBER OLSON MOVED, AND COUNCIL MEMBER BARRENTINE SECONDED, TO APPROVE RESOLUTION NO. 53, SERIES OF 2016.

RESOLUTION NO. 53, SERIES OF 2016

A RESOLUTION SUPPORTING THE RENEWAL OF THE SCIENTIFIC AND CULTURAL FACILITIES DISTRICT.

Vote results:

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

Motion carried.

13. City Manager's Report

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

14. City Attorney's Report

Acting City Attorney Comer advised Council that he has received certified funds for \$8,000.00, closing a settlement with Cuttin it Loose hair salon.

15. Adjournment

MAYOR JEFFERSON MOVED TO ADJOURN. The meeting adjourned at 10:09 p.m.

/s/ Loucrishia A. Ellis
City Clerk



PROCLAMATION

WHEREAS, in 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the United States and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS, trees in the City of Englewood increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal; and

WHEREAS, the City of Englewood, Colorado has been recognized for 31 consecutive years as a Tree City USA by The National Arbor Day Foundation and desires to continue its tree-planting ways; and

WHEREAS, the State of Colorado will celebrate Arbor Day on April 15th, 2016;

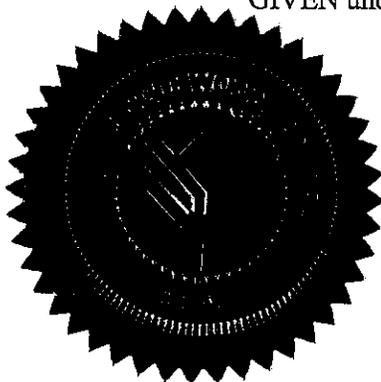
NOW THEREFORE, I, Joe Jefferson, Mayor of the City of Englewood, Colorado, hereby recognize

ARBOR DAY

in the City of Englewood, Colorado, and I urge all Englewood citizens to support efforts to care for our trees and woodlands and to support our City's efforts to protect our trees and woodlands.

Further, I urge all Englewood citizens to plant trees to gladden the hearts and promote the well being of present and future generations.

GIVEN under my hand and seal this 4th day of April, 2016.



Joe Jefferson, Mayor

COUNCIL COMMUNICATION

Date: April 4, 2016	Agenda Item: 9bi	Subject: Bulletproof Vest Partnership - Intergovernmental Agreement- 2 nd Reading
Initiated By: Police Department		Staff Source: Deputy Chief Jeff Sanchez

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

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

RECOMMENDED ACTION

The Police Department is recommending that City Council adopt a Bill for an Ordinance on second reading 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

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 16
INTRODUCED BY COUNCIL
MEMBER GILLIT

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.

Read by title and passed on final reading on the 4th day of April, 2016.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2016, on the 7th day of April, 2016.

Published by title on the City's official website beginning on the 6th day of April, 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

COUNCIL COMMUNICATION

Date April 4, 2016	Agenda Item 9bii	Subject Modification to the Budget Advisory Committee Ordinance- 2 nd Reading
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, on second reading, 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 GILLIT

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.

Read by title and passed on final reading on the 4th day of April, 2016.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2016, on the 7th day of April, 2016.

Published by title on the City's official website beginning on the 6th day of April, 2016 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

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

COUNCIL COMMUNICATION

Date: April 4, 2016	Agenda Item: 9biii	Subject: Approval of an intergovernmental agreement (IGA) to cosponsor the SBA's Emerging Leaders Program- 2 nd reading
Initiated By: Community Development Department		Staff Source: Darren Hollingsworth Economic Development Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

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

A goal of the Englewood's Economic Development Strategy is to foster 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, on second reading, 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, 2016. The training component will provide approximately 20 small businesses with 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 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 for the duration of the program.

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 GILLIT

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.

Read by title and passed on final reading on the 4th day of April, 2016.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2016, on the 7th day of April, 2016.

Published by title on the City's official website beginning on the 6th day of April, 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

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 |

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

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 | mshsheehan@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: \$XXX
- 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 |

Greater Englewood Chamber of Commerce

Nancy Byers, Board Member
nbconsulting@comcast.net |

Accion Colorado

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

Colorado Enterprise Fund

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

Colorado Small Business Development Center

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

First National Denver

Megan Sheehan, SBA Banker
msheehan@firstnationaldenver.com |

Mi Casa-Women's Business Center

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

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

	<u>CASH</u>	<u>Estimated In- Kind</u>
Course Delivery/Instructors (Contract)	\$40,000	
Facilities Rental <i>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.</i>		\$8,820
Food/Refreshments <i>Open House & Graduation Event</i>		
Guest Speakers		
	TOTAL EXPENSE	
	\$40,000	\$8,820

SOURCE OF INCOME

	<u>CASH</u>	<u>Estimated In- Kind</u>
SBA	\$40,000	
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		

Attachment B - Joinder Agreement

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.

Colorado Small Business Development Center

Kelly Manning, Director

Date

Mi Casa-Women's Business Center

Elena Vasconez
Director of Business Development

Date

Colorado Enterprise Fund

Alisa Zimmerman
Director of Marketing and Communications

Date

First National Denver Bank

Megan Sheehan, SBA Banker

Date

COUNCIL COMMUNICATION

Meeting Date: April 4, 2016	Agenda Item: 9biv	Subject: Vacation/Dedication of a portion of Alley East of 3400 South Broadway- 2 nd Reading.
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 approval of a bill for an ordinance, on second reading, 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 GILLIT

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.

Read by title and passed on final reading on the 4th day of April, 2016.

Published by title in the City’s official newspaper as Ordinance No. ____, Series of 2016, on the 7th day of April, 2016.

Published by title on the City’s official website beginning on the 6th day of April, 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

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, 46, 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°52'06"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*

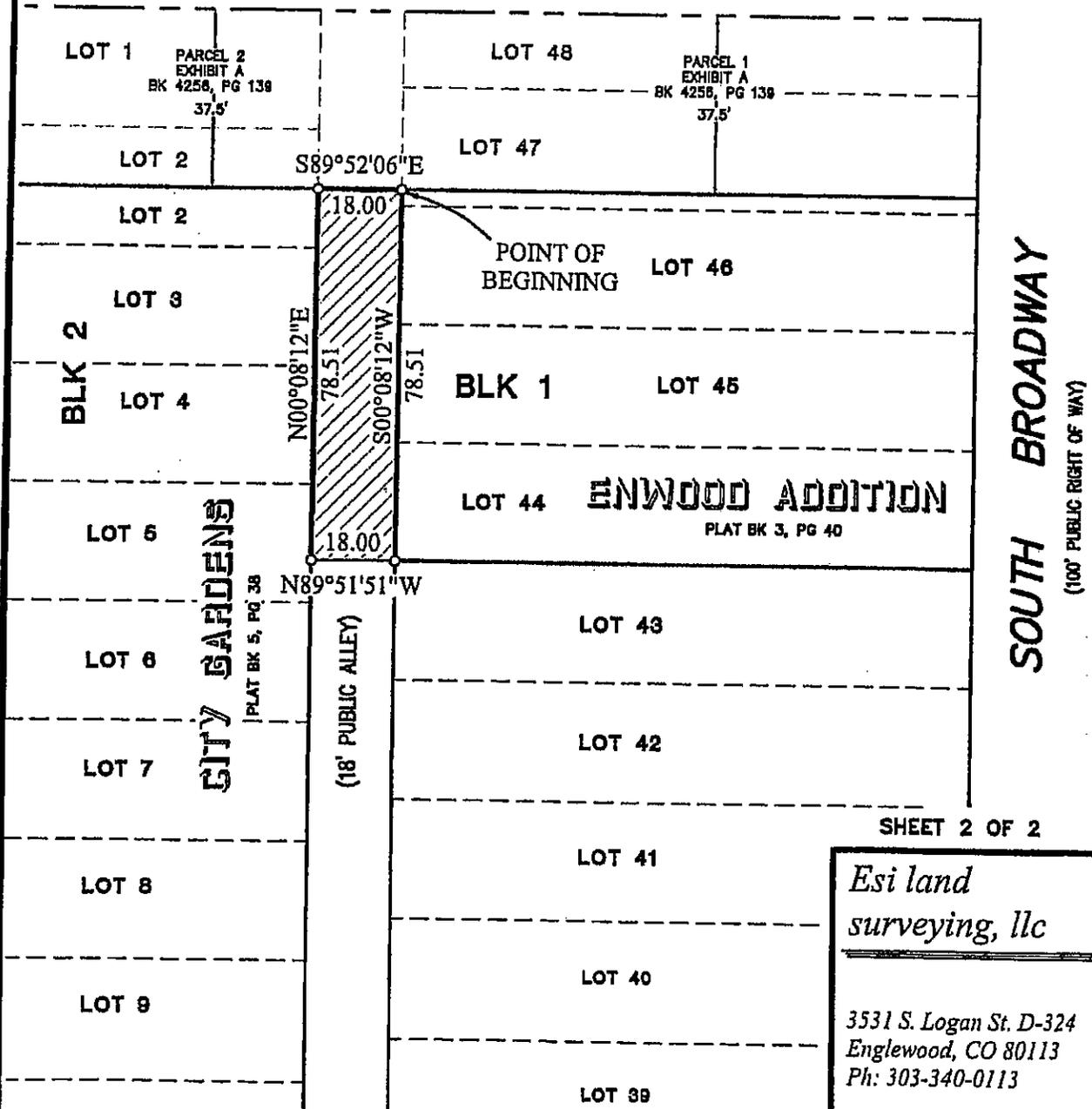
EXHIBIT A

Scale: 1" = 30'



WEST ENGLEWOOD PKWY.

(VARIABLE WIDTH PUBLIC RIGHT OF WAY)



SHEET 2 OF 2

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

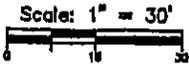
WHEREAS, any damage or interruption to the Transportation/Utility Easement would result in significant actual and consequential damages; and

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

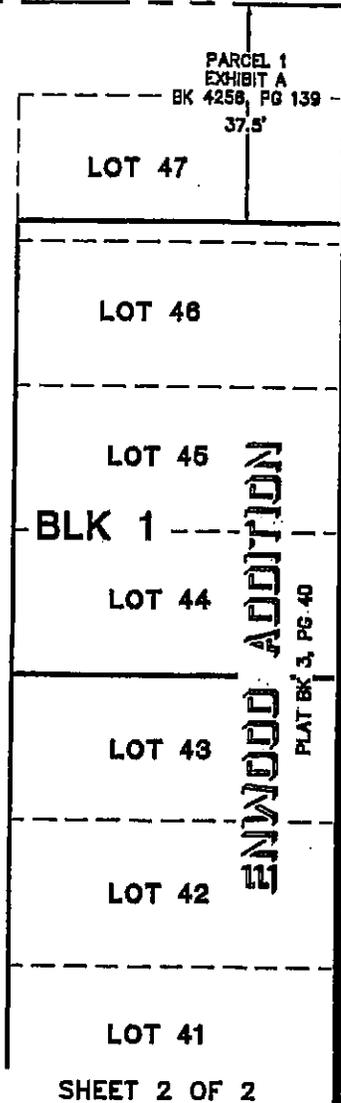
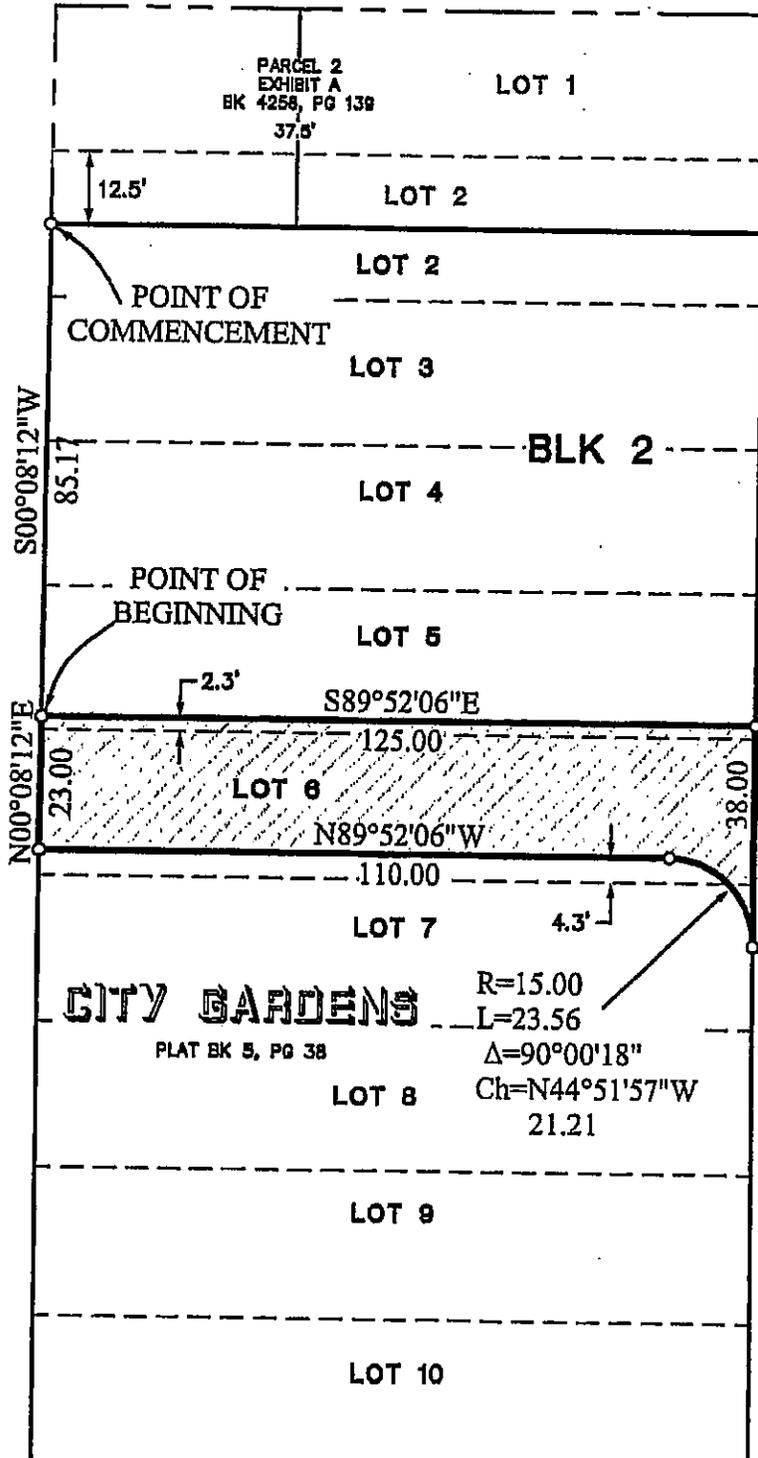


WEST ENGLEWOOD PKWY.

(VARIABLE WIDTH PUBLIC RIGHT OF WAY)

SOUTH ACOMA ST.

(50' PUBLIC RIGHT OF WAY)



(16' 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 I OF THE LANDS DESCRIBED AT BOOK 4405, PAGE 863, 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 I; 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 S00°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°52'08"W A DISTANCE OF 110.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 6; THENCE N00°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: April 4, 2016	Agenda Item: 9bv	Subject: Rite-Aid - 707 E. Jefferson Ave., Exchange of ROW, Grant of ROW and Grant of Temporary Construction License- 2 nd reading
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, on second reading, 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.

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 15
INTRODUCED BY COUNCIL
MEMBER GILLIT

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.

Read by title and passed on final reading on the 4th day of April, 2016.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2016, on the 7th day of April, 2016.

Published by title on the City's official website beginning on the 6th day of April, 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

GRANT OF TEMPORARY CONSTRUCTION LICENSE

THIS LICENSE AGREEMENT, made and entered into as of this 13th 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 ~~1/1/16~~ Commission Expires 05/23/2016

NOTARY PUBLIC

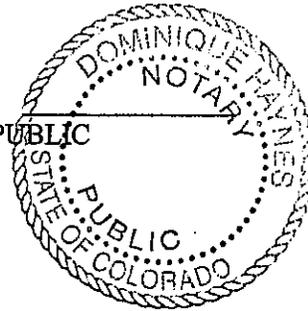


EXHIBIT "A"
CITY DITCH RIGHT-OF-WAY

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

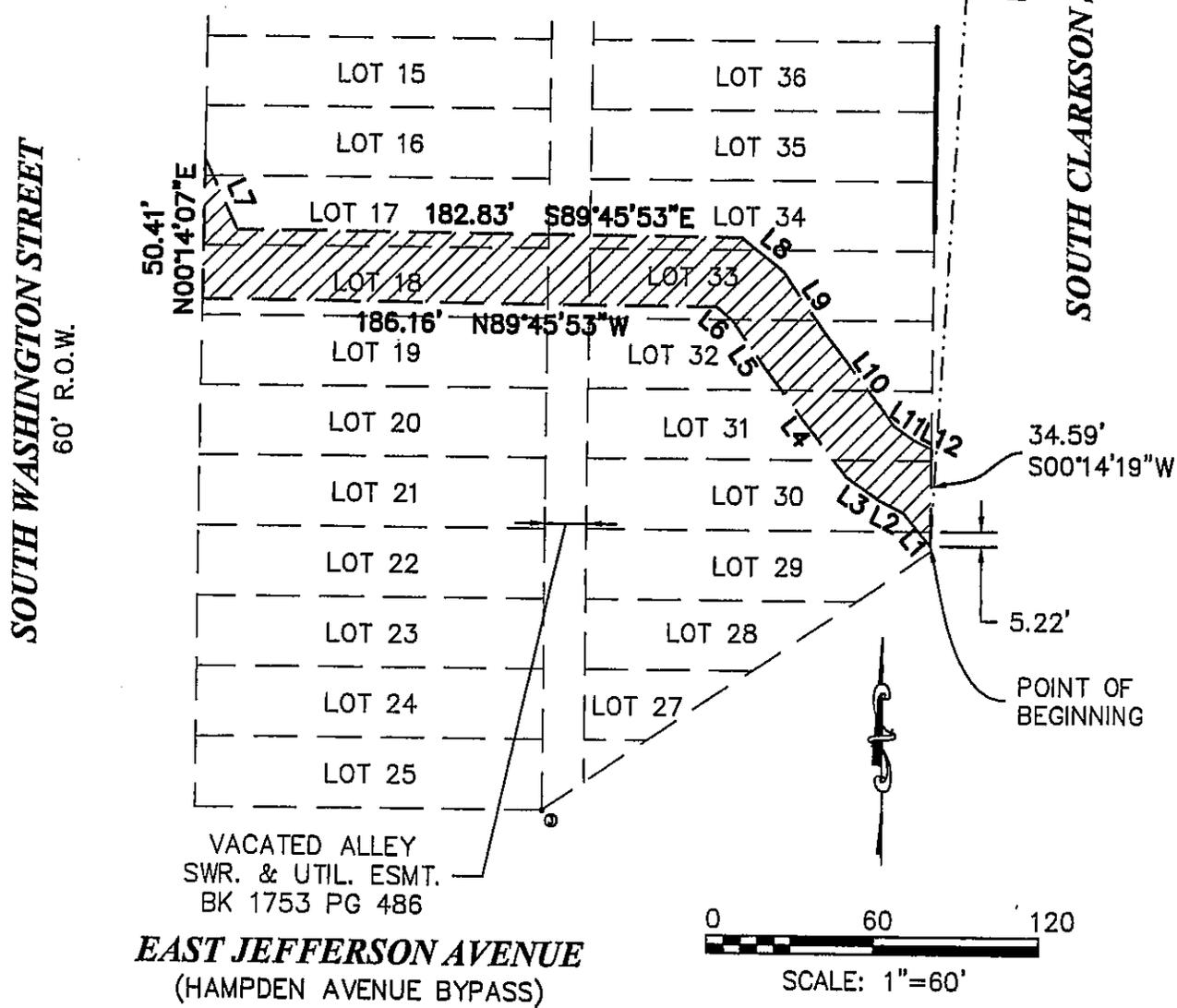
PREPARED BY:
39 NORTH ENGINEERING AND SURVEYING LLC
4495 HALE PARKWAY
SUITE 305
DENVER, CO 80220
PH: 303-325-5071
EMAIL: damien.cain@39north.net

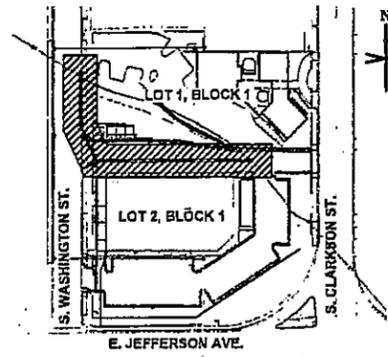
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CITY DITCH RIGHT-OF-WAY

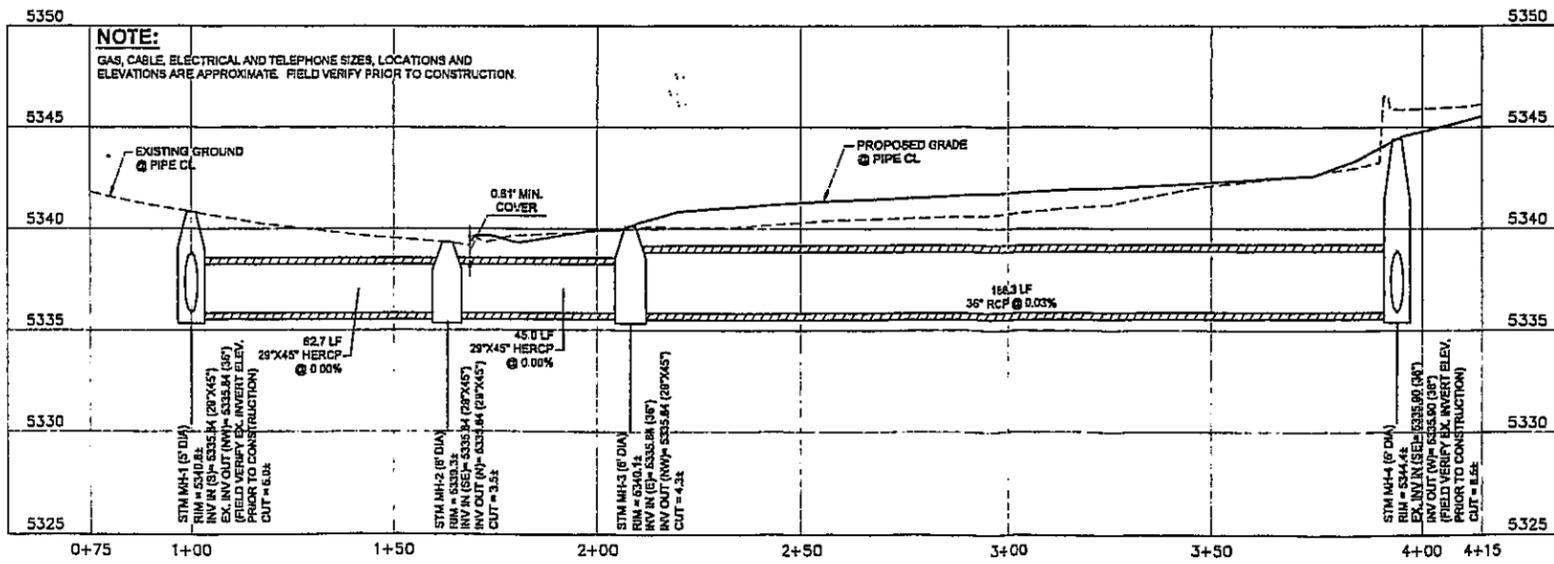
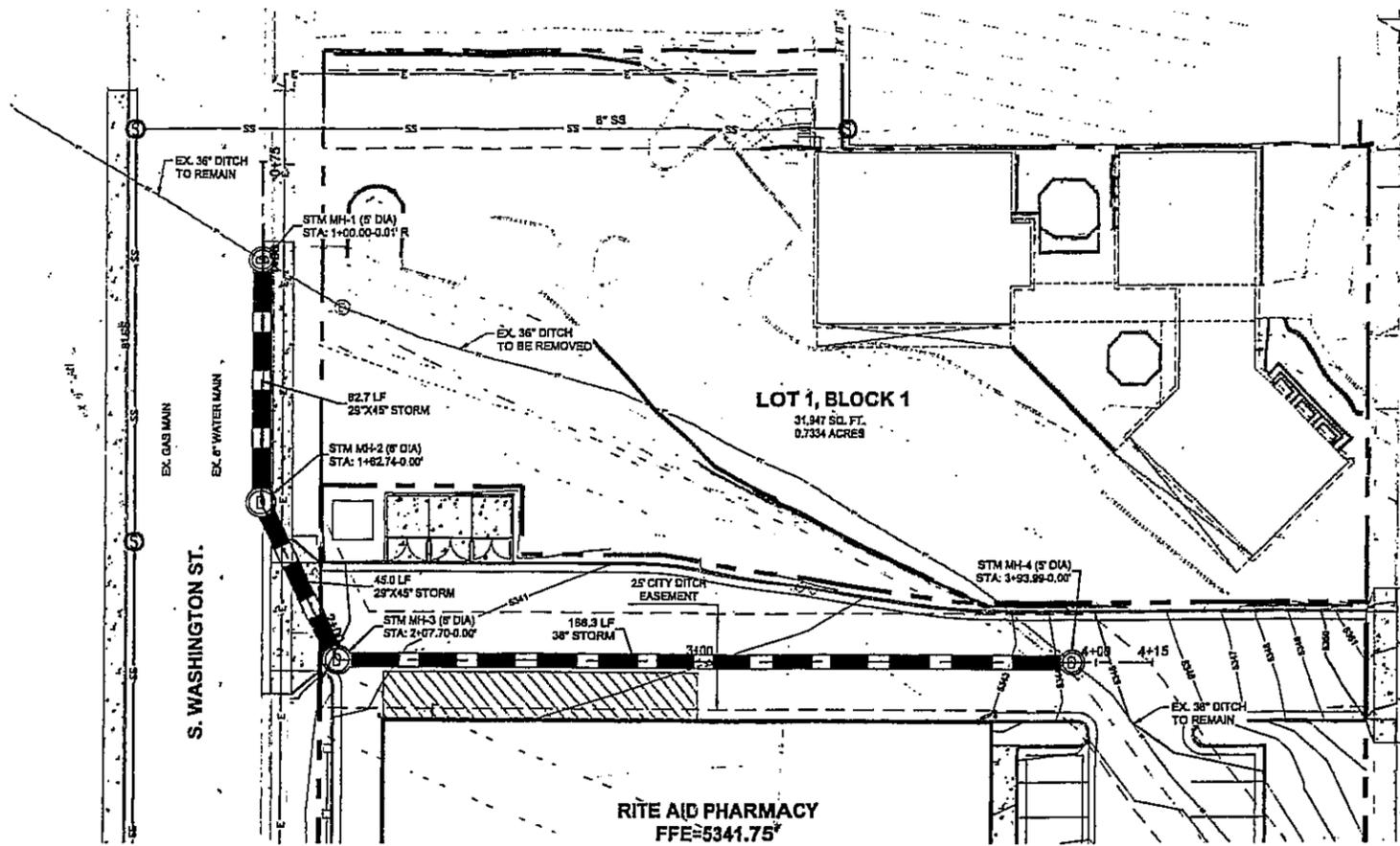
LINE TABLE		
LINE	LENGTH	BEARING
L1	15.50'	N40°35'24"W
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L8	19.57'	S50°49'41"E
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L10	40.60'	S37°41'31"E
L11	8.91'	S55°37'54"E
L12	7.08'	S65°08'45"E

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





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

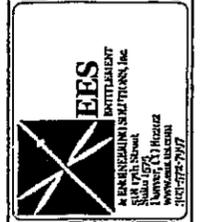
PROJECT BENCHMARK
NGS VERTICAL CONTROL POINT - W409 (PID - KK1489) BEING A STAINLESS STEEL ROD IN 5" DIAMETER LOGO BOX AT THE SOUTHEAST CORNER OF SOUTH DOWNING STREET AND EAST JEFFERSON AVENUE. ELEV. +5380.88 (NAVD 1988 DATUM)

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.

REVISION	DATE
ISSUED FOR WATER & SEWER BOARD APPROVAL	12/09/15



UTILITY PLANS
RITE AID #673
ENGLEWOOD, CO
E. JEFFERSON AVE. (CDOT 28) & 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

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 05/28/2016

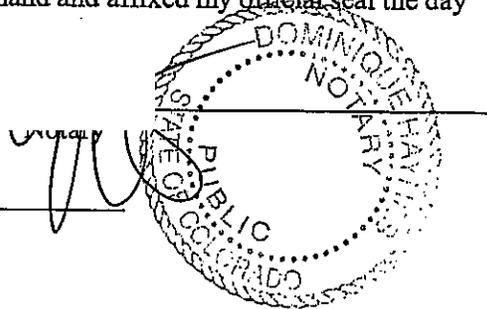


EXHIBIT "A"

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 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
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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

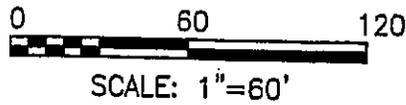
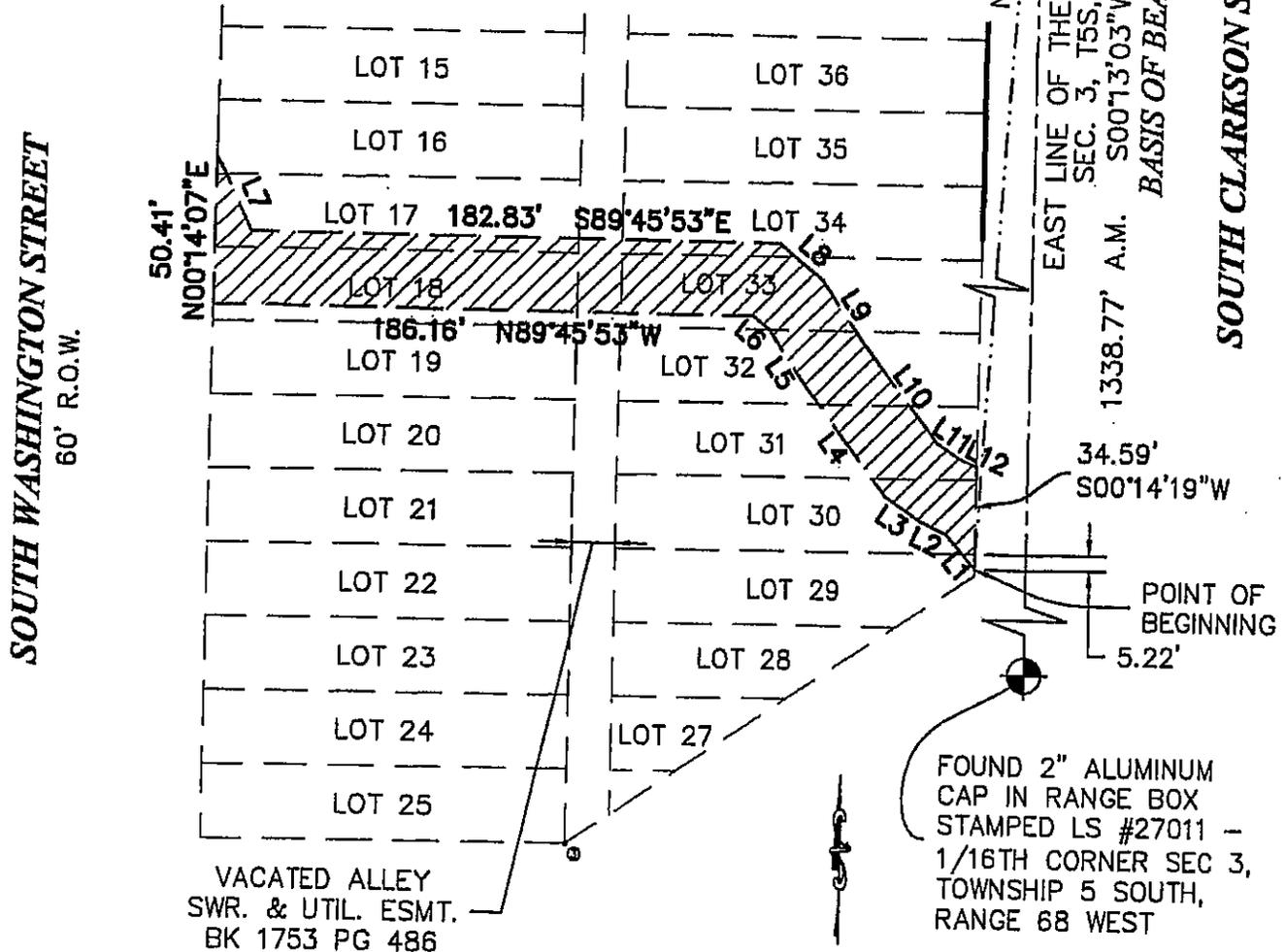


EXHIBIT "B"

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
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PREPARED BY:
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PH: 303-325-5071
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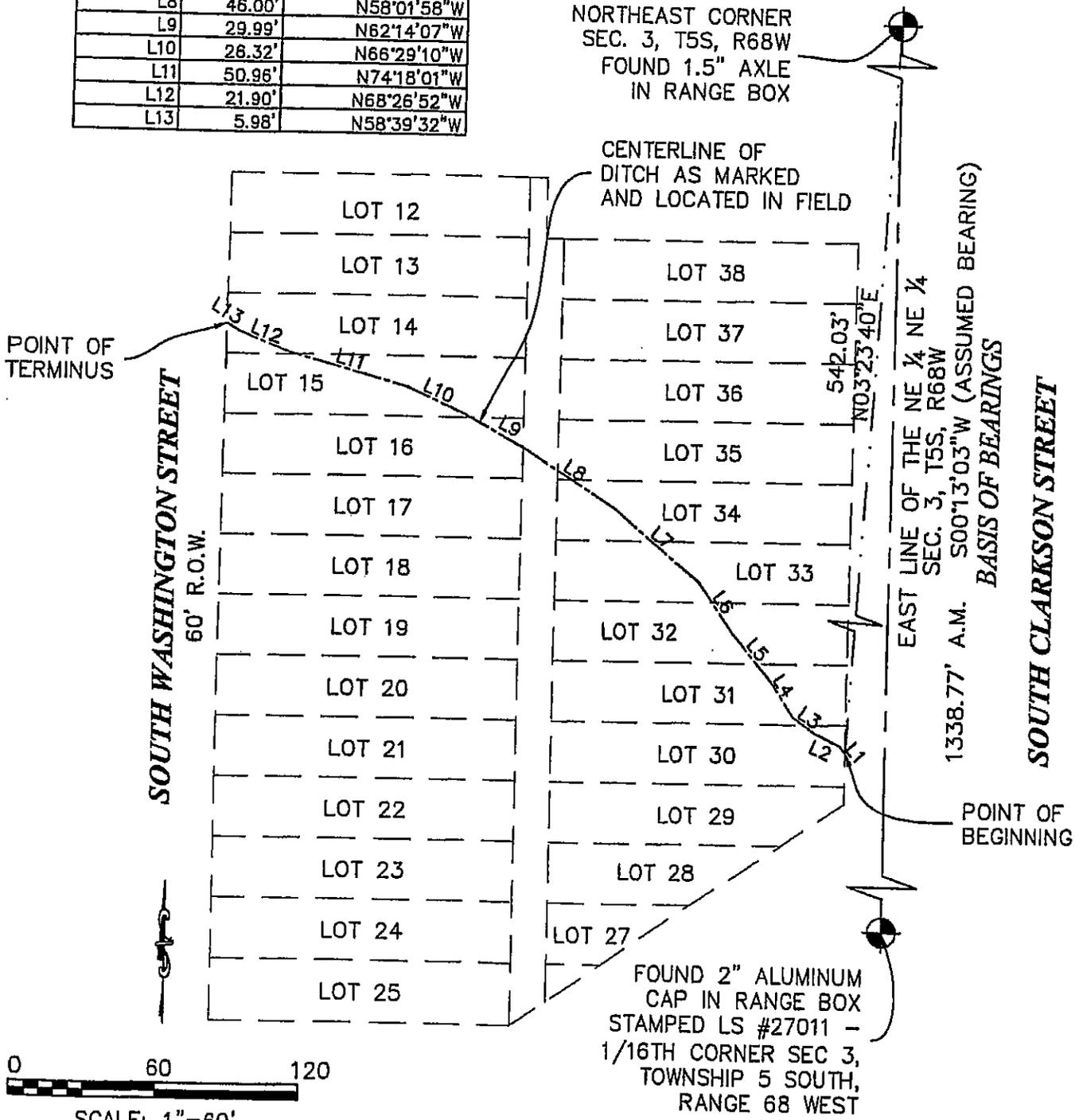
PLEASE NOTE THAT THIS EXHIBIT AND LEGAL DESCRIPTION DOES NOT REPRESENT A MONUMENTED SURVEY PLAT. THE LOCATION OF THE EXISTING DITCH IS AN APPROXIMATE LOCATION BASED ON PAINT MARKINGS IN THE FIELD AND EXISTING MANHOLE LOCATIONS.

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	26.32'	N66°29'10"W
L11	50.96'	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

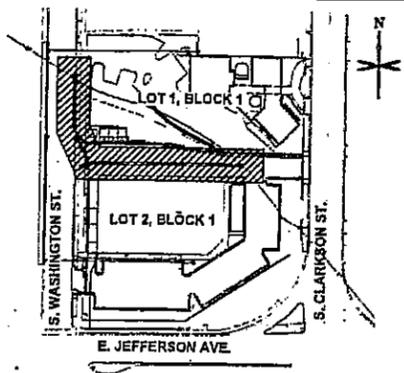
CENTERLINE OF
DITCH AS MARKED
AND LOCATED IN FIELD

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

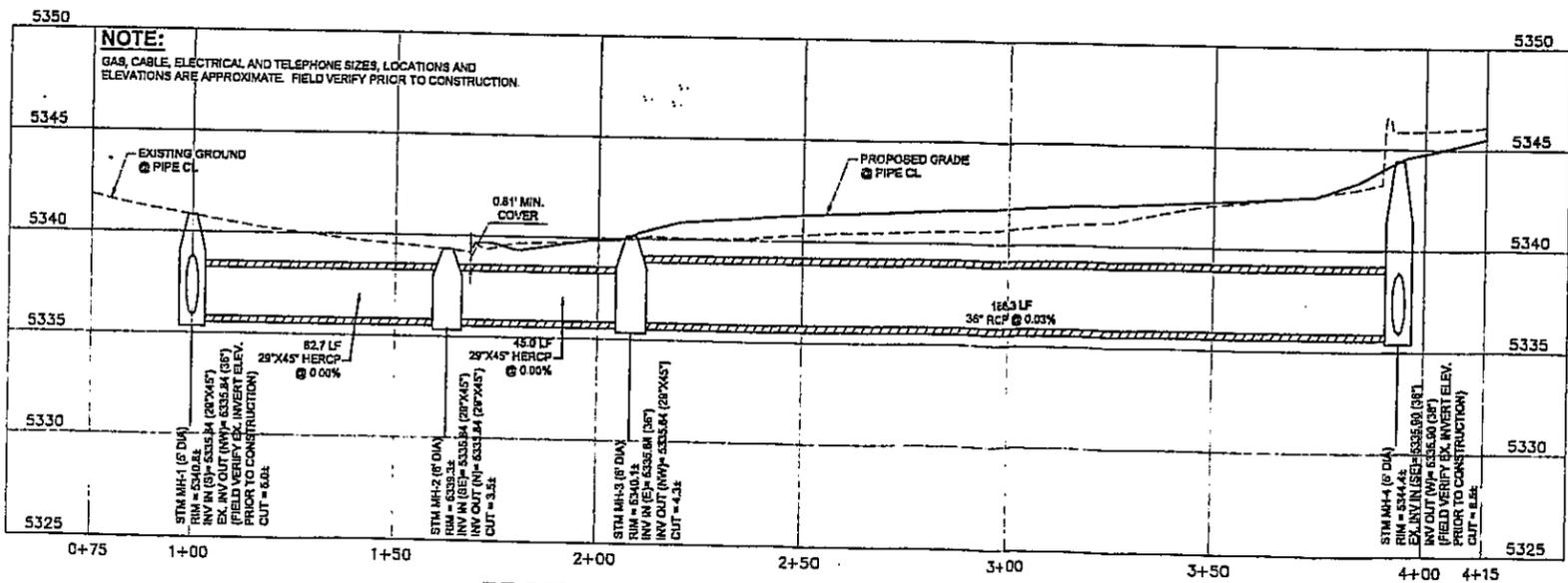
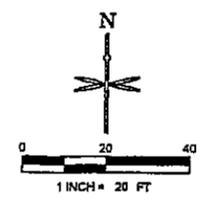
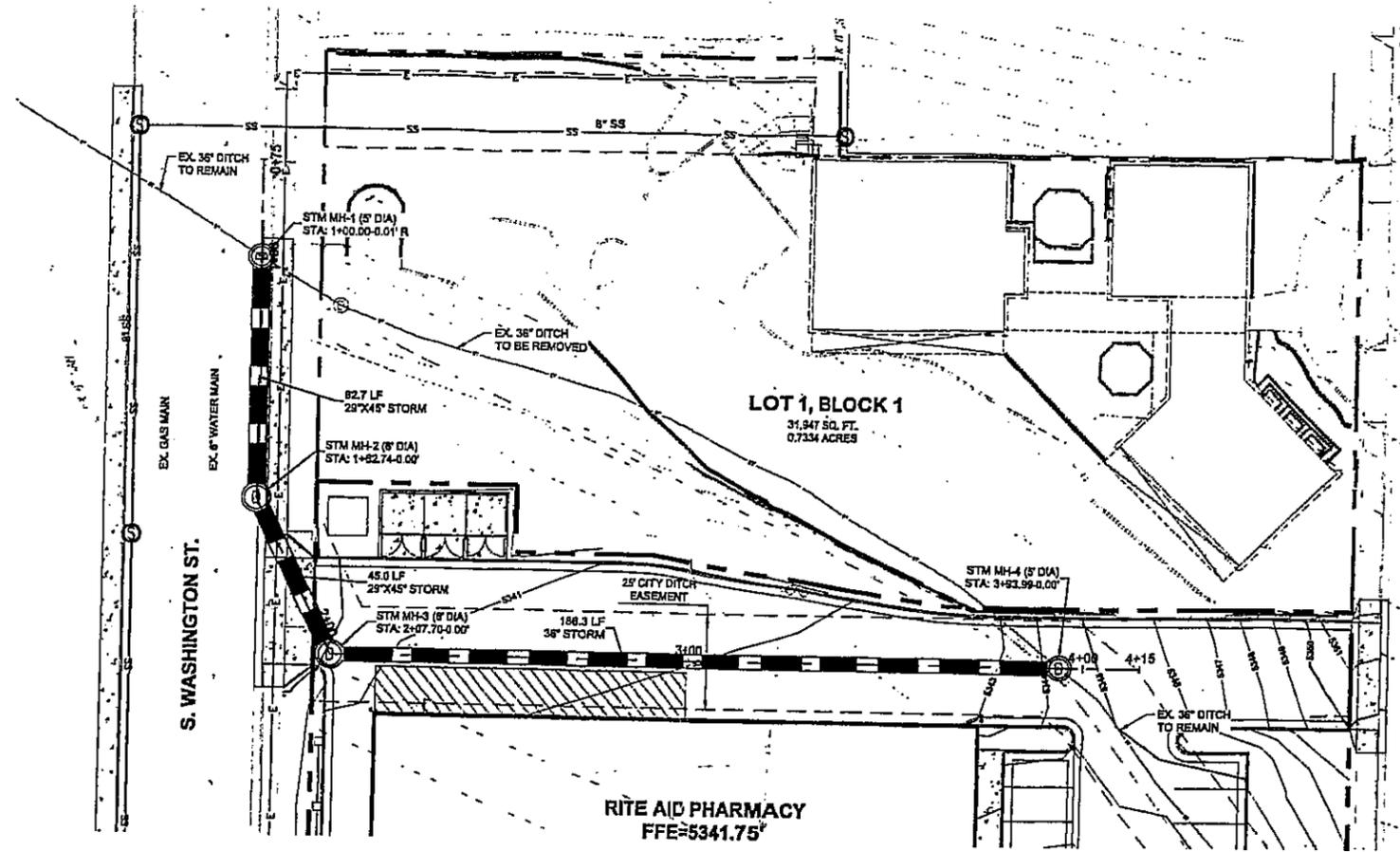
FOUND 2" ALUMINUM
CAP IN RANGE BOX
STAMPED LS #27011 -
1/16TH CORNER SEC 3,
TOWNSHIP 5 SOUTH,
RANGE 68 WEST

EAST JEFFERSON AVENUE
(HAMPDEN AVENUE BYPASS)

© 2013, ALL RIGHTS RESERVED.



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 OVER-HEAD 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 - K01469) BEING A STAINLESS STEEL ROD IN 5" DIAMETER LOGO BOX AT THE SOUTHEAST CORNER OF SOUTH DOWNING STREET AND EAST JEFFERSON AVENUE. ELEV. = 5380.88 (NAVD 1988 DATUM)

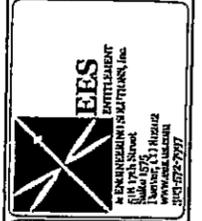
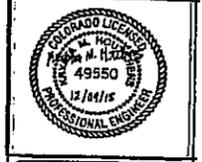
811
Know what's below.
Call before you dig.

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.

REVISION	BY	DATE
1	KMH	12/08/15

ISSUED FOR WATER & SEWER BOARD APPROVAL



UTILITY PLANS
RITE AID #6773
ENGLEWOOD, CO
E. JEFFERSON AVE. (CDOT 205) & CLARKSON ST.

UNDERGROUND DITCH PLAN & PROFILE

PROJECT NO:	KGR002.01
DESIGNED BY:	KMH
DRAWN BY:	KMH
DATE:	12/08/15

C4.4
SHEET 5 OF 5

P:\ENTRO GROUP\RITE AID CO. ENGLEWOOD - HANDED AND CAROLINNE CONDOT 3 DITCH PLAN & PROFILE.DWG

C-B-I-B-X

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):
KRF 965, LLC

BY: _____
Printed Name\ Jimmy Balafas
Title: 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, on the Grant of Right of Way, base sheet notary.

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

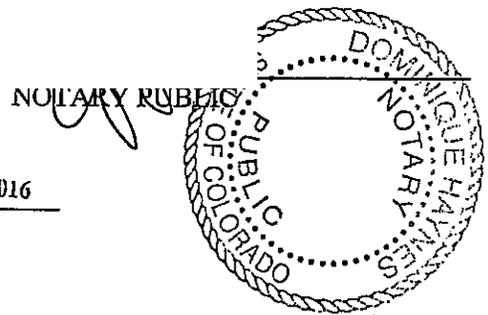


EXHIBIT "A"
CITY DITCH RIGHT-OF-WAY

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 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

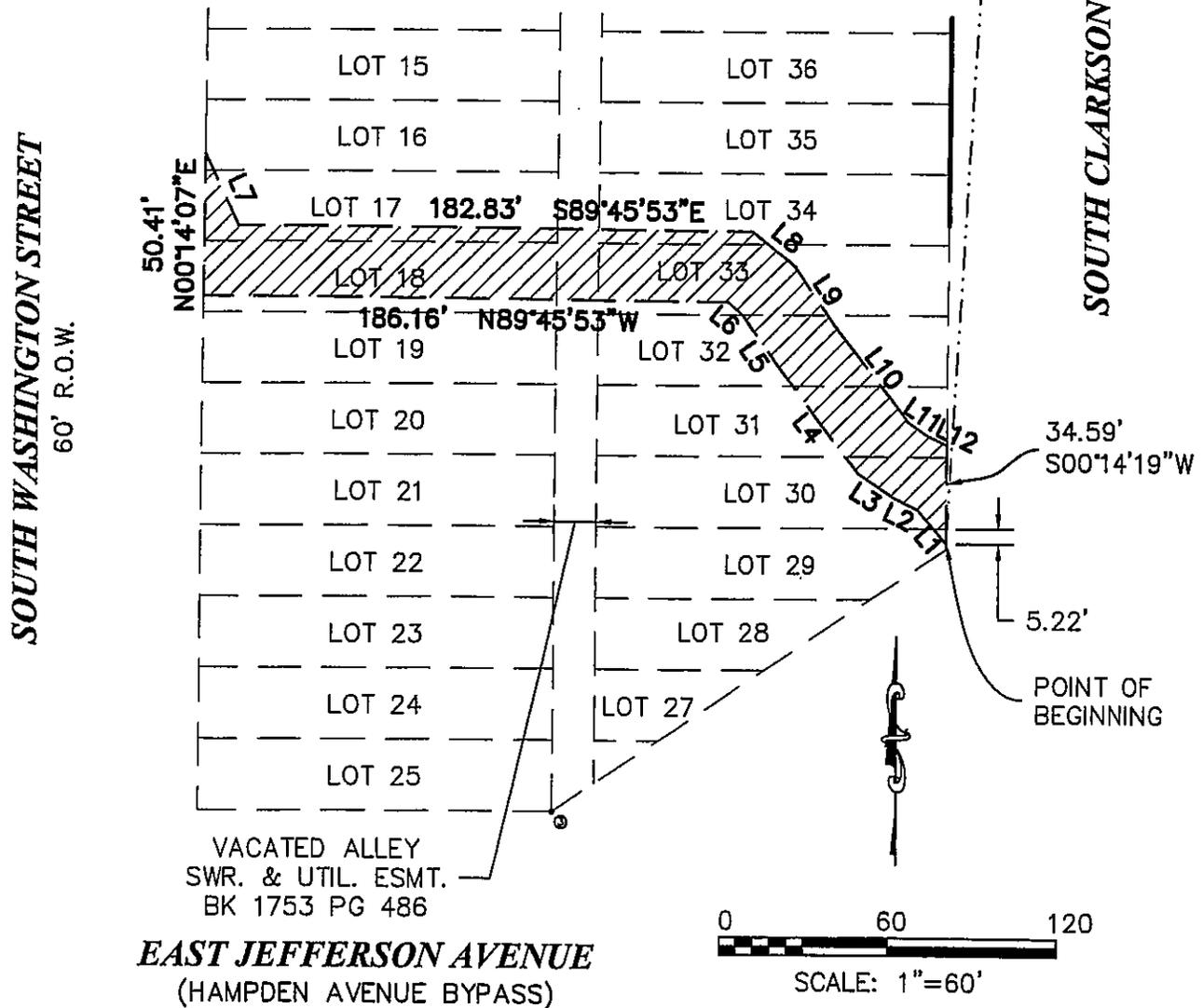
PREPARED BY:
39 NORTH ENGINEERING AND SURVEYING LLC
4495 HALE PARKWAY
SUITE 305
DENVER, CO 80220
PH: 303-325-5071
EMAIL: damien.cain@39north.net

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
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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



COUNCIL COMMUNICATION

Meeting Date: April 4, 2016	Agenda Item: 11ai	Recommendation to approve a bill for an ordinance pertaining to "Operation of a vehicle approached by emergency vehicle – operation of vehicle approaching stationary emergency vehicle"
Initiated By: Police Department	Staff Source: Deputy Chief Jeff Sanchez	

PREVIOUS COUNCIL ACTION

City Council previously adopted the Colorado Model Traffic Code (1995 Revision).

RECOMMENDED ACTION

The Police Department recommends that City Council adopt a bill for an ordinance which would add a new section (B)(15) to Title 11 of the Englewood Municipal Code – Part 6, Section 705 (2)(a)(b)(c) – Operation of vehicle approached by emergency vehicle - operation of vehicle approaching stationary emergency vehicle.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Colorado Model Traffic Code has been periodically amended by the Colorado State Legislature to include Section 705 (Operation of vehicle approached by emergency vehicle - operation of vehicle approaching stationary emergency vehicle).

Currently, the city does not have a matching ordinance which requires drivers to yield to stationary authorized emergency vehicles that are giving visual signals by means of flashing lights, therefore our officers must write these violations into Arapahoe County for prosecution.

It would be preferable if we could write these tickets into our own Municipal Court for prosecution and adjudication.

FINANCIAL IMPACT

There is no financial impact to the City.

LIST OF ATTACHMENTS

Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 17
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AMENDING TITLE 11, CHAPTER 1, SECTION 1, SUBSECTION B, OF THE 2000 ENGLEWOOD MUNICIPAL CODE BY THE ADDITION OF A NEW SECTION 15 PERTAINING TO THE OPERATION OF A VEHICLE APPROACHED BY AN EMERGENCY VEHICLE.

WHEREAS, the Colorado Model Traffic Code has been periodically amended by the Colorado State Legislature to include Section 705 "Operation of vehicle approached by emergency vehicle"; and

WHEREAS, the Englewood Municipal Code 2000 does not have an ordinance which requires drivers to yield to stationary authorized emergency vehicles that are giving visual signals by means of flashing lights; and

WHEREAS, therefore our Police Officers must write violations into Arapahoe County for prosecution of such offenses; and

WHEREAS, the passage of this ordinance allows these types of violations to be written into the Englewood Municipal Court for prosecution and adjudication.

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 amending Title 11, Chapter 1, Section 1, Subsection B, by the addition of a new Paragraph 15, and renumbering the current Paragraphs 15 through 33, of the Englewood Municipal Code 2000 to read as follows:

TITLE 11 – PUBLIC WAYS AND PROPERTY.

Chapter 1 - TRAFFIC CODE

11-1-1: Adoption of Code.

- A. Pursuant to Section 44, Article V of the Englewood Home Rule Charter, and Title 31, Article 16, Parts 1 and 2, C.R.S. 1973, as amended, there is hereby adopted by reference Articles I and II, inclusive of the 1995 Edition of the "Model Traffic Code for Colorado Municipalities," promulgated and published as such by the Colorado Department of Transportation, 4201 E. Arkansas Avenue, Denver, Colorado 80222. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic-control regulations for

the City. The purpose of this Chapter and the code adopted herein is to provide a system of traffic regulation consistent with State law and generally conforming to similar regulations throughout the State and Nation. A copy of the Model Traffic Code adopted herein is now filed in the office of the City Clerk of the City and may be inspected during regular business hours.

- B. The 1995 edition of the Model Traffic Code is adopted as if set out at length, except for the following parts and Sections of Article I which are declared to be inapplicable to this municipality and are therefore expressly deleted or amended:

EDITORS NOTE: Sections 11-1-1 A through B 1 through 14, contain no changes and are therefore not included here.

15. Part 7, Section 705. Operation on approach of emergency vehicles of vehicle approached by emergency vehicle – operation of vehicle approaching stationary emergency vehicle.

(2)(A) A driver in a vehicle that is approaching or passing a stationary authorized emergency vehicle that is giving a visual signal by means of flashing, rotating, or oscillating red, blue, white, or amber lights as permitted by section 213 or 222, shall exhibit due care and caution and proceed as described in paragraphs (b) and (c) of this subsection (2).

(B) On a highway with at least two adjacent lanes proceeding in the same direction on the same side of the highway where a stationary authorized emergency vehicle is located, the driver of an approaching or passing vehicle shall proceed with due care and caution and yield the right-of-way by moving into a lane at least one moving lane apart from the stationary authorized emergency vehicle, unless directed otherwise by a peace officer or other authorized emergency personnel if movement to adjacent lane is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic, the driver of the approaching vehicle shall proceed in the manner described in paragraph (c) of this subsection (2).

(C) On a highway that does not have at least two adjacent lanes proceeding in the same direction of the same side of the highway where a stationary authorized emergency vehicle is located, or if movement by the driver of the approaching vehicle into an adjacent lane, as described in paragraph (b) of this subsection (2), is not possible, the driver, of an approaching vehicle shall reduce and maintain a safe speed with regard to the location of the stationary authorized vehicle, weather conditions, road conditions, and vehicular or pedestrian traffic and proceed with due care and caution, or as directed by a peace officer or other authorized emergency personnel.

EDITORS NOTE: Sections 11-1-1 C, contain no changes and are therefore not included here.

Section 2. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary

for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 4. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 6. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the 4th day of April, 2016.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7th day of April, 2016.

Published as a Bill for an Ordinance on the City's official website beginning on the 6th day of April, 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 7th day of April, 2016.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date	Agenda Item	Subject
April 4, 2016	11bi	Ordinance to approve lease of Englewood McLellan Reservoir Foundation property to Shea Properties d.b.a. Central Park at Highlands Ranch, LLC.- 2 nd Reading
INITIATED BY Englewood McLellan Reservoir Foundation		STAFF SOURCE Murphy Robinson, 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, on second reading, 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 GILLIT

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.

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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Exhibit B	Memorandum of Lease	

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 Delaware corporation its Manager

By: _____
Name: John Kilrow
Title: Assistant Secretary

By: _____
Name: J Peter A. Culshaw
Title: Assistant Secretary

EXHIBIT A
DEPICTION OF PREMISES

[PROPOSED LOT 4, HIGHLANDS RANCH FILING NO. 156, 1ST AMENDMENT]

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.

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