



## Lone Tree City Council *Amended* Agenda Tuesday, December 16, 2014

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**Meeting Location:** City Council Meeting Room, Lone Tree Civic Center, 8527 Lone Tree Parkway.  
**Meeting Procedure:** The Lone Tree City Council and staff will meet in a public Study Session at 4:30pm. At 6:00pm and following the meeting, if necessary, the Council Meeting will adjourn and convene in Executive Session. If an Executive Session is not necessary, Council will recess for dinner. The Regular Session will be convened at 7:00pm. Study Sessions and Regular Sessions are open to the public, Executive Sessions are not. Comments from the public are welcome at these occasions: 1. Public Comment (brief comments on items not scheduled for a public hearing) 2. Public Hearings. Contact the City Clerk if special arrangements are needed to attend (at least 24 hours in advance).

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### 4:30pm Study Session Agenda

1. Construction Defects Ordinance Background Information
  2. First Amendment to RidgeGate Westside Annexation and Development Agreement
  3. Approval of Commissioners' Choice Selection
  4. Cherry Creek Basin Water Quality Authority IGA
  5. Parking of Commercial Vehicles on Residential Streets
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### 6:00pm Executive Session Agenda

1. Roll Call
  2. Executive Session
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### 7:00pm Regular Session Agenda

3. Opening of Regular Meeting/Pledge of Allegiance
4. Amendments to the Agenda and Adoption of the Agenda
5. Conflict of Interest Inquiry
6. Public Comment
7. Announcements
8. Presentations
  - a. Transit Alliance
9. Consent Agenda
  - a. Minutes of the December 2, 2014 Regular Meeting
  - b. Claims for the Period of November 24 – December 8, 2014
  - c. Treasurer's Report for October, 2014
10. Public Works
  - a. Approval of Contract for Pedestrian/Bridge Concept Design
11. Administrative Matters
  - a. Approval of First Amendment to the MOU re: Cultural Arts Center Site
  - b. **Resolution 14-23, ADOPTING THE 2015 GENERAL FUND, DEBT SERVICE FUNDS AND SPECIAL REVENUE FUNDS BUDGETS**
  - c. **Public Hearing: Resolution 14-24, ADOPTING A SUPPLEMENTAL BUDGET AND APPROPRIATION FOR FY2014 DUE TO UNANTICIPATED REVENUES OR REVENUES NOT ASSURED AT THE TIME OF ADOPTION OF THE BUDGET**
  - d. **Resolution 14-25, REGARDING ANNUAL ADMINISTRATIVE MATTERS FOR THE CITY OF LONE TREE FOR 2015**
  - e. **Resolution 14-26, APPOINTING A MEMBER TO THE AUDIT COMMITTEE**

- f. Approval of First Amendment to RidgeGate West Side Annexation and Development Agreement
  - g. *Approval of RidgeGate West Side Agreement Regarding Dedication, Acceptance and Maintenance of Public Improvements and Sales Tax Sharing*
  - h. *Approval of Amendment to Sales Tax Sharing Agreement*
12. Council Comments
  13. Adjournment

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### **City of Lone Tree Upcoming Events**

**More info available at [www.cityoflonetree.com](http://www.cityoflonetree.com) and [www.lonetreeartscenter.org](http://www.lonetreeartscenter.org)**

- City Offices will be closed in observance of Christmas on December 25 and New Year's Day on January 1
  - Home for the Holidays, December 18 – 24, 2014, LTAC
  - Sensory Friendly Family Tree – Home for the Holidays, Sunday, December 21, 2014, 7:30 PM
  - Conjure, Saturday, December 27<sup>th</sup>, 8:00 PM and Sunday, December 28<sup>th</sup>, 1:30 PM, LTAC
  - Swing Xing, Sunday, January 4, 2015, 7:30 PM, LTAC
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**MINUTES OF A REGULAR MEETING  
OF THE COUNCIL OF THE  
CITY OF LONE TREE  
HELD  
December 2, 2014**

A regular meeting of the Council of the City of Lone Tree was held on Tuesday, December 2, 2014, at 7:00 p.m., at the Lone Tree City Council Chambers located at 8527 Lone Tree Parkway, Lone Tree, Colorado 80124.

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Attendance

In attendance were:

James D. Gunning, Mayor  
Jacqueline Millet, Mayor Pro Tem  
Harold Anderson, Council Member  
Kim Monson, Council Member  
Susan Squyer, Council Member

Also in attendance were:

Seth Hoffman, City Manager  
Jennifer Pettinger, City Clerk  
Steve Hebert, Deputy City Manager  
Jeff Holwell, Economic Development Director  
Commander David E. Brown, Lone Tree Police Department  
Kristin Baumgartner, Finance Director  
Kelly First, Community Development Director  
Lisa Rigsby Peterson, Lone Tree Arts Center Director  
Neil Rutledge, City Attorney, White, Bear and Ankele, P.C.  
John Cotten, Public Works Director, TTG Corp.

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Call to Order

Mayor Gunning called the meeting to order at 7:01 p.m., and observed that a quorum was present.

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Pledge of Allegiance

Mayor Gunning led those assembled in reciting the Pledge of Allegiance.

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Amendments to the Agenda

There were no amendments to the agenda.

Conflict of Interest

There was no conflict of interest.

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Public Comment

Bill Robertson, 9278 E. Aspen Hill Circle, said he wanted to correct an article in the Voice; he is not a member of the Park Meadows Metropolitan District board but was a member of the Heritage Hills Metropolitan District board. Mr. Robertson also congratulated Mayor Gunning for receiving the Madison Award.

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Announcements

Lisa Rigsby Peterson, Lone Tree Arts Center Director announced upcoming events.

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Presentations

*Introduction of 2014 Holiday Card Selection Winner*

Mayor Gunning and Lisa Rigsby Peterson introduced Brielle Creamer, Nikki Damian-Campbell, Claire Stanley, Ella Marris, Megan Apotheker and Caroline Joyce from Lone Tree Elementary whose artwork has been chosen for the 2014 City of Lone Tree Holiday Card.

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Consent Agenda

Mayor Gunning noted the following items on the Consent Agenda, which consisted of:

- *Minutes of the November 18, 2014 Regular Meeting*
- *Claims for the period of November 10-24, 2014*

Council Member Anderson moved, Mayor Pro Tem Millet seconded, to approve the Consent Agenda. The motion passed with a vote of 5-0.

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Public Works

*Approval of Change Order #1 with Thoutt Brothers Concrete Construction Inc. for the 2014 Concrete Replacement*

John Cotten, Public Works Director, introduced the item.

Council Member Squyer moved, Mayor Pro Tem Millet seconded, to approve Change Order #1 with Thoutt Brothers Concrete Construction Inc. for the 2014 Concrete Replacement. The motion passed with a vote of 5-0.

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Administrative Matters

*Public Hearing: Approval of Park Meadows Business Improvement District (BID) 2015 Operating Plan and Budget*

Mayor Gunning opened the public hearing at 7:15 p.m.

Neil Rutledge, City Attorney, introduced the item and Pamela Schenck Kelly who spoke about the District.

Mayor Gunning opened the public hearing for comment at 7:27 p.m.

There was no public comment.

The public hearing was closed at 7:27 p.m.

Mayor Pro Tem Millet moved, Council Member Anderson seconded, to approve the Park Meadows Business Improvement District (BID) 2015 Operating Plan and Budget. The motion passed with a vote of 5-0.

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*Approval of Audit Engagement Letters with Wagner, Barnes & Griggs, PC for Audit Services for the Year 2014*

Kristin Baumgartner, Finance Director, introduced the item.

Council Member Monson moved, Council Member Squyer seconded, to approve the Audit Engagement Letters with Wagner, Barnes & Griggs, PC for Audit Services for the Year 2014. The motion passed with a vote of 5-0.

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*Amendments to Council Adopted Policy (CAP) 09-06 Commissions, Boards & Committees (CBC) Appointment Policy*

Jennifer Pettinger, City Clerk, introduced the item.

Council Member Squyer moved, Mayor Pro Tem Millet seconded, to approve the amendments to Council Adopted Policy (CAP) 09-06 Commissions, Boards & Committees (CBC) Appointment Policy. The motion passed with a vote of 5-0.

Adjournment

There being no further business, Mayor Gunning adjourned the meeting at 7:42 p.m.

Respectfully submitted,

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Jennifer Pettinger, CMC, City Clerk



CITY OF LONE TREE  
STAFF REPORT

**TO: Mayor Gunning and City Council**

**FROM: John P. Cotten, P.E.**

**DATE: December 8, 2014**

**FOR: December 16th Council Meeting**

**SUBJECT: Conceptual Designs of the Lincoln Pedestrian Bridge**

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Summary

Public Works issued a Request for Proposals to three firms for the conceptual design, cost estimating and public presentation of two to three conceptual designs for the proposed Lincoln Avenue Pedestrian Bridge. Fentress Architects was selected from the three proposals that were submitted.

The attached contract covers the preparation of three conceptual designs with preliminary cost ranges for each design. The cost of presentations at one public meeting as well as before the Planning Commission and the City Council are also included.

Cost

The contract value is \$156,110 plus reimbursable expenses estimated at \$15,610.

Suggested Motions

I recommend approval of the Agreement with Fentress Architects for conceptual design services for the Lincoln Avenue Pedestrian Bridge.

Background

This Agreement will provide conceptual architectural, structural and cost estimating services to assist the City in developing the preferred look and character of the proposed bridge. It will also assist in quantifying the budget cost for the selected design and provide for presentation of the designs to the public as well as the Planning Commission and the City Council.

Fentress Architect and their sub-consultant BuroHappold Engineering have designed several similar structures of varying character and size. Fentress' other sub-consultant Illume, who is a lighting consultant, has also done lighting design on several pedestrian bridges. Together they bring significant experience on this

type of project as well as a national and international reputation for innovative and timeless design of many types of structures.

Brief descriptions of the firms involved in the team, which are excerpted from the proposal are included below.

i) | Firm Information

**FENTRESS ARCHITECTS**

Design Architect  
421 Broadway, Denver, Colorado 80203

The creation of inspirational architecture has been Fentress Architects' mission for more than three decades. Lured to the majestic Rocky Mountains by natural beauty and a wealth of opportunity, Curtis Fentress, FAIA, RIBA, founded Fentress Architects in 1980 to create humanistic architecture that respects and honors its context.

Based in Denver, Fentress Architects is a global organization that transforms the impossible into the possible. The studio's designers are experts in public architecture and follow current trends with an eye toward flexibility for the future. Our designers take pride in being collaborative and creative problemsolvers with the ability to take even the most difficult urban site and strict regulations and design a project that becomes part of the fabric of the community. We do not design structures to merely fulfill the program requirements; each of Fentress Architects' designs aspires to improve the built and natural and community environments in which they reside.

The Fentress studio has designed 108.6 million square feet of public projects worth \$30 billion worldwide, visited by 450 million people each year. Fentress Architects' goal for each project is to collaborate with the client in creating a landmark-quality structure that is ambitious in design and practical in use. In both design and function, these projects must exemplify the beliefs, aspirations, and sophistication of the communities they serve.

**BUROHAPPOLD CONSULTING ENGINEERS, P.C.**

Structural Engineer  
100 Broadway, 23rd Floor, New York, New York 10005

BuroHappold has developed a strong reputation for the engineering of world class, iconic architecture – architecture that is significant and lasting. Creativity, analysis, ingenuity and a touch of technical genius – they combine all of this to deliver exciting and efficient structures that go beyond expectations. Their unrivalled reputation with architects, contractors, and specialists means they always offer outstanding design solutions and outstanding value.

They use the most sophisticated techniques to test their buildings and their performance, meticulously analyzing every minute detail from materials and building methods to costs, risk and sustainability, in order to ensure their clients always have complete confidence in them.

BuroHappold's global experience means they can build in the most demanding of climates; they approach every project as unique, as a challenge waiting to be solved. From temporary structures such as the stunning Polish Pavilion in Shanghai and intricate art installations such



Denver International Airport



National Museum of the Marine Corps



Dubai Mixed-Use Facilities



Atwater Bridge



as Voussoir Clouds, to sports venues such as Pinnacle Bank Arena and Baylor University's McLane Stadium, and iconic masterpieces such as the roof at the British Museum and the Academy Museum of Motion Pictures in Los Angeles, their engineers make a vision reality.

**ILLUME**

Lighting Design  
10055 West 43rd Avenue, Wheat Ridge, Colorado 80033

ILLUME has contributed to the visual environment for a variety of award winning national and international projects. Working closely with the project team, they balance technical expertise and design aesthetics to produce lighting systems that enhance the architecture. Their dual role as project manager and designer enables them to implement concept design to construction documents, on time and within budget.

ILLUME's services range from concept master planning and design studies to full construction documentation with final aiming and focusing. With any type of project, large or small, interior or exterior, public or private, they are able to provide studies for daylight analysis, custom fixture design, computer 3D model rendering, energy analysis, lighting control systems, scale modeling and mock-ups. They have a thorough understanding of green building practices and have collaborated on many LEED-certified buildings.

**RIDER LEVETT BUCKNALL**

Cost Consultant  
1675 Larimer Street, Suite 470, Denver, Colorado 80202

Rider Levett Bucknall is consistently at the forefront of innovation and technological advancement for cost consultancy services in the construction industry and they apply that knowledge and experience to the benefit of the projects in which they are involved. Whether it's incorporating the use of GPS technology to streamline reporting and construction monitoring, utilizing Building Information Models (BIM) to develop more accurate construction cost estimates, or identifying new construction methods such as a trenchless technique of installing utilities to minimize construction-related disruption and expedite the construction schedule, Rider Levett Bucknall is on the cutting edge of cost consultancy services and technology.

Rider Levett Bucknall utilizes Critical Path Method (CPM) scheduling to develop a baseline schedule at project inception and for project updates throughout the project lifecycle. By including design and construction in this schedule, all factors contributing to overall completion date are defined and monitored from design inception. This allows the project team to make design and phasing decisions based on the overall project goals.



West Thames Street Pedestrian Bridge



Orchard Station Pedestrian Bridge



Phoenix Civic Plaza



CU Williams Village



# AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the fourth day of December in the year 2014  
*(In words, indicate day, month and year)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, address and other information)*

City of Lone Tree  
9220 Kimmer Drive  
Lone Tree, CO 80124

and the Architect:  
*(Name, address and other information)*

Fentress Architects  
421 Broadway  
Denver, CO 80203

for the following Project:  
*(Name, location and detailed description)*

20140080.001  
Lone Tree Pedestrian Bridge  
Lincoln Avenue  
Lone Tree, CO 80124

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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- 10 MISCELLANEOUS PROVISIONS
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- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

**EXHIBIT A WORK PLAN / SCOPE**

**ARTICLE 1 INITIAL INFORMATION**

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in *(Paragraphs deleted)* attached Exhibit "A", Work Plan / Scope.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

October 1, 2015

.2 Substantial Completion date:

April 30, 2016

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

§ 1.4 The Owner represents and warrants that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to perform its obligations under this Agreement and under the Contract Documents. The Architect may demand assurance in writing of the Owner's ability to satisfy the foregoing. The Owner's failure to provide such reasonable assurances shall be grounds for termination of this Agreement by the Architect.

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§ 1.5 The Owner recognizes and accepts that once design recommendations have been made by the Architect and approved by the Owner, the Contract Documents prepared and construction commenced on the basis of the Owner's approval, any changes may be difficult, costly, or cause extensive delays. While the Architect will endeavor to reasonably anticipate and advise the Owner of such risks, the Owner recognizes and accepts that the costs resulting from such risks, as stated above, are solely the responsibility of the Owner.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

Commercial general liability insurance including coverage for bodily injury, property damage and personal injury, and contractual liability and broad form property damage with combined single limits in an amount not less than One Million Dollars (\$1,000,000.00).

.2 Automobile Liability

Commercial automobile liability insurance, including non-owned, hired vehicles, with combined single limits of not less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage.

.3 Workers' Compensation

Statutory amounts of Worker's Compensation.

.4 Professional Liability

Professional liability insurance in the amount of One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate.

§ 2.5.5 Such insurance shall be maintained with insurance carriers approved by Owner and Owner shall be named as an additional insured on the general liability and automobile liability policies. Copies of all such policies or, at Owner's discretion, certificates evidencing such insurance, shall be delivered to the Owner prior to the commencement date of this Agreement, and such other times during the Term as Owner requests. Insurance carrier shall be rated B+ or better per Best's Key Rating Guide.

§ 2.5.6 Provided the Architect maintains the professional liability insurance required by Paragraph § 2.5, with limits not less than the minimum limits therein specified, the Owner agrees not to seek recovery from the Architect, or any of the Architect's principals, officers, partners or employees personally, for damages of any nature in connection with the performance of this Agreement, to the extent such damages exceed the available policy limits of the insurance carried

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12/16/14

by the Architect or its consultants. Nothing contained herein shall be interpreted to limit the Owner's right to recover damages of any nature to the extent such damages are recoverable under policies of insurance carried by the Architect or its consultants hereunder.

§ 2.6 The Owner shall not permit construction of the Project to begin until the insurance required by the Contract Documents is in effect with the Architect named as an additional insured. As a minimum, the Owner shall carry an all risk (builder's risk) policy with the Architect named as an additional insured and shall require the Contractor to carry a commercial general liability insurance and business auto policy with adequate limits for the Project's size and value and with the Architect named as an additional insured on all such policies. It is acknowledged that the Architect has an insurable interest in the Project under the builder's risk policy. In the event the Owner permits construction of the Project to begin before such insurance is obtained, the Owner agrees to indemnify and hold the Architect harmless from and against all suits, claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of construction of the Project.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and attached Exhibit "A": include usual and customary structural, cost estimation, mechanical, and electrical engineering services. Services not set forth in Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 The Architect has provided for the Owner's approval a schedule, attached as Exhibit "B" for the performance of the Architect's services. The schedule includes anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information and Exhibit A. The schedule includes allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 CONCEPTUAL DESIGN WORK PLAN

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other information provided in Exhibit A, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

*(Paragraphs deleted)*

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Not Provided	
§ 4.1.2 Multiple preliminary designs	Arch	
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Not Provided	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	
§ 4.1.6 Building information modeling	Not Provided	
§ 4.1.7 Civil engineering	Not Provided	
§ 4.1.8 Landscape design	Not Provided	
§ 4.1.9 Architectural Interior Design (B252™-2007)	Not Provided	
§ 4.1.10 Value Analysis (B204™-2007)	Arch	
§ 4.1.11 Detailed cost estimating	Not Provided	
§ 4.1.12 On-site project representation	Not Provided	
§ 4.1.13 Conformed construction documents	Not Provided	
§ 4.1.14 As-designed record drawings	Not Provided	

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§ 4.1.15	As-constructed record drawings	Arch	
§ 4.1.16	Post occupancy evaluation	Not Provided	
§ 4.1.17	Facility Support Services (B210™-2007)	Not Provided	
§ 4.1.18	Tenant-related services	Not Provided	
§ 4.1.19	Coordination of Owner's consultants	Not Provided	
§ 4.1.20	Telecommunications/data design	Not Provided	
§ 4.1.21	Security Evaluation and Planning (B206™-2007)	Not Provided	
§ 4.1.22	Commissioning (B211™-2007)	Not Provided	
§ 4.1.23	Extensive environmentally responsible design	Not Provided	
§ 4.1.24	LEED® Certification (B214™-2007)	Not Provided	
§ 4.1.25	Fast-track design services	Not Provided	
§ 4.1.26	Historic Preservation (B205™-2007)	Not Provided	
§ 4.1.27	Furniture, Finishings, and Equipment Design (B253™-2007)	Not Provided	
		Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect has given written notice to the Owner of the need for the Additional Service by e-mail to the Owner's Representative:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

(Paragraphs deleted)

**ARTICLE 5 OWNER'S RESPONSIBILITIES**

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility,

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expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

*(Paragraph deleted)*

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. The Architect shall receive schedules of and the reports directly from the materials testing agencies in a timely fashion. The Architect shall not be liable or responsible for the report, number and frequencies of the inspections and tests, the information contained therein, reliance upon said report and information by others, or the services, acts or omissions of the materials testing agencies. The Owner shall indemnify and hold the Architect harmless from and against all suits, claims, damages, losses and expenses, including but not limited to, reasonable attorneys' fees arising out of or resulting from the performance or failure of performance of the materials testing agencies.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The

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Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

#### ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information and Work Plan / Scope, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase

*(Paragraphs deleted)*

Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

*(Paragraph deleted)*

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, including but not limited to Drawings, Specifications or other

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Documents, CAD files and/or Building Information Models (collectively "Data"), the following additional conditions will apply to each and every transfer.

§ 7.1.1 The transfer of the Data is not and shall not be deemed a sale. The Data are instruments of service and the Architect disclaims all warranties with regard to the Data including all implied warranties of merchantability or fitness for a particular purpose.

§ 7.1.2 The Owner acknowledges that the Data are furnished "as is," and Architect makes no representation with respect to the Data's quality, adequacy, completeness, or sufficiency, or as to any results to be achieved by the Data's use or the Data's conformance with as-built conditions. The Owner or the individual or entity who receives the Data on the Owner's behalf is responsible for verification of the Data upon receipt. The Architect has no way of controlling the handling and storage of the Data once it is released to the Owner and cannot be responsible for anomalies or errors that may occur during transfer or malfunctions or incompatibility with the recipient's computer equipment.

§ 7.1.3 If the Data transferred include building information models ("Models"), the Owner and Architect agree to the following additional terms: (i) the Models are intended for the purpose of communicating design intent. While they may be helpful to illustrate conflicts or inconsistencies in the design, the Models may not detect all conflicts or inconsistencies; (ii) Any use of the Models for the purpose of generating quantity take-offs or cost estimates, or for fabrication, will be at the recipient's sole risk; (iii) As with Fentress' other services and deliverables, the Models will be prepared using that degree of skill and care exercised by licensed professionals practicing in the same community, under the same or similar circumstances. The Models may contain or be based upon data or information provided by others. Architect has relied upon such data or information as is consistent with industry practice and the professional standard of care; (iv) Information contained in the Models will not be construed to dictate construction means or methods, which will remain the contractor's responsibility; (v) To the extent of any conflict between information contained in, or generated by, the Models and Architect's drawings and specifications, the latter documents will prevail.

§ 7.1.4 Architect may retain an archival copy of the Data, which shall be conclusive proof and govern in any dispute over the Data's form or content.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service regardless of format, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project provided the Owner requires these recipients to be bound by the provisions of Article 7 of this Agreement. A separate Data Transfer Agreement is available from the Architect specifically for this purpose. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner agrees to indemnify, defend and hold Fentress, its officers, directors, shareholders, employees, agents, and consultants harmless from and against any and all claims, liabilities, suits, demands, losses, damages, costs, and expenses, including, but not limited to, reasonable attorney's fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing to or resulting from any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including, but not limited to, injuries, death or economic losses, arising out of Transferee's or Other's use, reuse, transfer, or modification of the Data, except where a court or forum of competent jurisdiction determines that Fentress is solely liable for such damages or losses.

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§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by proceeds received by the claimant from property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction, as amended. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the Judicial Arbitrator Group located in Denver, Colorado. A request for mediation shall be made in writing, delivered to the other party to the Agreement. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in advance of the litigation proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Denver, Colorado, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

§ 8.2.5. The parties expressly consent to the venue and jurisdiction of the state and federal courts located in the City and County of Denver, Colorado for the resolution of any claims arising under this Agreement regardless of the

location of the Project or the law governing the Project. In the event litigation is initiated by either party related to this Agreement, the prevailing party in such litigation shall be entitled to and the court shall award all reasonable attorneys' fees and costs, including but not limited to expert witness fees, incurred with respect to such litigation, including all fees and costs related to mediation and on appeal.

### § 8.3 INTENTIONALLY OMITTED

*(Paragraphs deleted)*

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than thirty days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

§ 9.9 It is recognized and agreed that the design services provided for in this Agreement will not and cannot be completed until all such services, including the Contract Administration Phase services, have been performed in full by the Architect. The Owner acknowledges that the inability of the Architect to complete those services will significantly increase the risk of loss resulting, among other causes, from misinterpretation of the intent of the design, unauthorized modifications thereto, and failure to detect errors and omissions in the plans and specifications before they become costly mistakes built into the Project. Therefore, in the event that this Agreement is prematurely terminated or that the Architect is otherwise precluded from completing the services set forth herein, the Owner agrees to hold harmless, indemnify, and defend the Architect from and against all suits, claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from the use of the documents without the Architect's involvement in the completion of the Project.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

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§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, as amended, unless a contrary definition is set forth herein in inferable herefrom.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 It is acknowledged that the Architect's performance of services in connection with this Project is not for the benefit of, or may not be enforced by any third party, the Contractor, its subcontractors, or their respective sureties. It is understood that the Architect's obligations are solely to the Owner. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect. The Owner agrees that the provisions of this paragraph shall be included in the Construction Contract.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 Force Majeure: Neither party to this Agreement will be liable to the other party for delays in performing the Scope of Services, or for direct or indirect costs resulting from such delays, that may result from labor strikes, riots, acts of war, acts or threats of terrorism, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable commercial control of either party.

§ 10.10 Limitation of Liability: To the fullest extent permitted by law, the total liability in the aggregate, of Architect and Architect's officers, directors, employees, agents, and independent professional associates, and any of them, to Owner and any one claiming by, through or under Owner, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Architect's services, the project, or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of Architect or Architect's officers, directors, employees, agents or independent professional associates, or any of them, shall not exceed the available limits of the professional liability insurance policy as required under this Agreement.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Lump sum fee of One Hundred Fifty-six Thousand One Hundred Ten Dollars (\$156,110). Reimbursable expenses are not included in the lump sum fee and will be billed separately. Reimbursable expenses are estimated at Fifteen Thousand Six Hundred Eleven Dollars (\$15,611). Fees are outlined in the attached Exhibit "C" Design Fees, attached.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

Additional Services described in Section 4.1, if required, shall be proposed to the Owner in writing for approval prior to performing the Additional Service. Architect's compensation shall be adjusted based on a mutually agreeable lump sum fee.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Additional Services described in Section 4.3, if required, shall be proposed to the Owner in writing for approval prior to performing the Additional Service. Architect's compensation shall be adjusted based on a mutually agreeable lump sum fee.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten ( 10% ), or as otherwise stated below:

Architect's consultants' fees will be included in the lump sum proposal provided to the Owner in writing for approval prior to performing the Additional Service.

§ 11.5 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Architect's Hourly Rate Schedule is attached as Exhibit "D".

*(Table deleted)*

**§ 11.6 COMPENSATION FOR REIMBURSABLE EXPENSES**

*(Paragraphs deleted)*

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and

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.11 Other similar Project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent ( 10% ) of the expenses incurred.

*(Table deleted)*

§ 11.8 PAYMENTS TO THE ARCHITECT

*(Paragraphs deleted)*

§ 11.10.1 An initial payment of zero ( \$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

*(Paragraphs deleted)*

§ 11.8.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

2% per annum over the then prevailing prime rate of Vectra Bank of Colorado.

§ 11.8.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.8.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect, as amended;

.2

*(Paragraphs deleted)*

Other documents:

*(List other documents, if any, including Exhibit A, Work Plan / Scope, and additional scopes of service, if any, forming part of the Agreement.)*

- Exhibit "A" – Work Plan / Scope
- Exhibit "B" – Schedule
- Exhibit "C" – Design Fees
- Exhibit "D" – Architect's Hourly Rate Schedule
- Exhibit "E" – Illegal Aliens

This Agreement entered into as of the day and year first written above.

**OWNER**

**ARCHITECT**

\_\_\_\_\_  
*(Signature)*

James D. Gunning

Mayor

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Signature)*

Curtis W. Fentress

President & CEO

\_\_\_\_\_  
*(Printed name and title)*



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User Notes:  
12/16/14

## **Pedestrian Bridge Conceptual Design: Work Plan**

Fentress Architects | 20140080 | 2 December 2014

Fentress Architects is pleased to have been selected to provide design services for the **Pedestrian Bridge Conceptual Design** for the City of Lone Tree. Fentress has a long history of providing iconic contextual designs, and as such, the Lone Tree Pedestrian Bridge will become a signature element in the City. This document will explain the work plan that we will implement in order to complete the Conceptual Design for the project.

### **Information Gathering**

Initially, Fentress will gather the data that will be required for the project design to begin. This will include

- Survey information that will show any boundary limitations.
- Utility information that will show areas that we should avoid placing structural elements.
- Soils information for the landing areas of the bridge.
- Photography of the area – both the proposed site and the context, including the Lone Tree Arts Center.
- Jurisdictional information that might inform the design.

Using this information, we will begin building a computerized three-dimension model of the bridge site.

### **Kick-Off Meeting**

We look forward to the Kick-Off Meeting with the City of Lone Tree Staff. In this meeting, our primary job will be listening to the staff explain the City's needs and their vision for the Pedestrian Bridge. We understand that the bridge will provide connectivity of the pedestrian and bicycle pathways along the Willow Creek Trail across Lincoln Avenue. We will come prepared to review, and modify if necessary, our proposed schedule for the development of the design.

### **Progress Meeting with the City Staff**

Following the Kick-Off Meeting, Fentress will develop concepts for the bridge. Our goal is the development of at least three different concepts, each incorporating the information gathered at the Kick-Off Meeting. Per your Request for Proposal, at least one of the schemes will develop a cable-stay option. These concepts will be developed on a computer model of the site and the Lincoln Avenue roadbed, so that the relationship of the bridge to the road and the areas to the north and south of Lincoln are included in the studies.

Bridge concepts will include the approach ramps on both ends of the bridge, as well as the 170 foot span. Fentress is known for sensitivity to context, and consideration will be given to the character and materials in the City of Lone Tree, specifically the Arts Center, and the landscape and signage standards for the City. As the concepts are developed, we will review them with our structural engineer to ensure that the design is highly constructible.

For the progress meeting with the City, we plan to bring prints showing plans, elevations, and three-dimensional views (which can remain with the City staff). We will also bring the computer model, so that we can view the design from any direction. At this point, models will be conceptual, and we will plan a dialog with the City that will inform the continuing development. We will provide copies of the materials reviewed for the City Staff use, and will document the comments, questions, and directions from the meeting and provide meeting minutes to the City within one week.

of each meeting date. Following the progress meetings, Fentress will review the designs with the Cost Estimator for a very preliminary look at possible costs for the concepts.

### **Design Charrette**

Fentress and the selected structural engineer will attend a design charrette. We will arrive prepared with the further development of the designs reviewed in the progress meetings, as well as material samples. We will be prepared to informally present the designs developed to date, and sit down with the Staff to discuss and draw as we share ideas on the continuing development of the designs. We will prepare meeting minutes recording the discussion and recommendations that result from the meeting and delivering these to the City within one week of the meeting date. Immediately following the design charrette, we will meet with the Cost Estimator to secure an initial opinion of probable cost for each scheme.

### **Public Input Meeting**

Following the Design Charrette with the City Staff, Fentress will integrate the ideas developed and prepare a presentation for the Public Input Meeting. We anticipate providing an overall plan which includes an overview of the landscape at the base of the approach ramp, an enlarged plan of the approach ramp, elevation views of the east and west, and three dimensional views of the bridge from Lincoln, the pedestrian path, and the view within the bridge. Fentress would collaborate with the City on the presentation, and we will be prepared to walk with Lone Tree citizens through the proposed project and answer their questions. Following the meeting, we propose to hold a brief follow up meeting with the City Staff to discuss the Public comments and their implementation. We will document all of the comments received in the public meeting and in the staff follow-up meeting and deliver them to the City Staff within one week of the meeting date.

### **City Planning Commission Meeting**

In the time between the Public Input Meeting and the City Planning Commission Meeting, Fentress will:

- Make final refinements to the design based on public comment and Staff input.
- Finalize the three-dimensional computer models for the selected schemes.
- Direct the structural engineer to prepare conceptual structural diagrams and narratives of the designs.
- Direct the cost estimator to prepare an opinion of probable costs for each scheme.
- Prepare the presentation for the Planning Commission, including a powerpoint and material samples.

This work will be reviewed with the City Staff prior to the City Planning Commission meeting, then presented to the Planning Commission.

### **Lone Tree City Council Meeting**

In the time between the City Planning Commission Meeting and the City Council Meeting, Fentress will refine details of the designs based on the Planning Commission comments. Then, the materials from the Planning Commission meeting will be prepared for the City Council Meeting. All work will be reviewed with the City Staff prior to the City Council meeting.

### **Deliverables**

The final package of deliverables for each scheme will be:

- Overview plans and enlarged plans of the bridge.

- Elevations of each side of the bridge showing datum elevations relative to the Lincoln roadbed and adjacent approach ramps.
- Sections showing the height and structural aspects of the design.
- Three-dimensional views of the bridge, including pedestrian approaches, automobile views (from Lincoln), aerial views, and one night view, illustrating the lighting concept for the design.
- Conceptual structural diagrams and narratives for each scheme.
- Opinions of probable cost for each scheme.

This information will be delivered to the City of Lone Tree in an 11 x 17 format, with three-dimensional views of each scheme provided on 24" x 36" laminated boards intended for display. For an additional fee, Fentress Architects can prepare a physical model for use by the City to explain and promote the bridge design.

EXHIBIT B

City of Lone Tree, Colorado

**Pedestrian Bridge Conceptual Design: Schedule**

Fentress Architects | 20140080 | 10 November 2014: Revised 2 December 2014

Activities / Task		December					January				February				March					
		1	8	15	22	29	5	12	19	26	2	9	16	23	2	9	16	23	30	
<b>Project Award</b>		November 25																		
<b>Information Gathering</b>		December 1-5																		
Tasks	Collect Survey Information																			
	Collect Design Concept Information																			
	Refine Schedule																			
	Prepare for Kick-Off Meeting																			
<b>Kick-Off Meeting</b>		December 18																		
Tasks	Develop 2-3 concepts	[Red bar from Dec 18 to Jan 5]																		
	Research materials and systems																			
	Consult structural engineer for feasibility	Dec 18-Jan 13																		
<b>Progress Meeting</b>		January 13																		
Tasks	Refine and prepare concepts for charette	[Red bar from Jan 13 to Jan 20]																		
	Structural engineer dev detail of diagram																			
	Initial review by cost estimator	Jan 13-27																		
<b>Design Charette</b>		January 27																		
Tasks	Refine designs	[Red bar from Jan 27 to Feb 3]																		
	Update structural concepts																			
	Prepare presentation	Jan 27-Feb 17																		
<b>Public Input Meeting</b>		February 17																		
Tasks	Finalize designs	[Red bar from Feb 17 to Feb 24]																		
	Finalize structural concepts																			
	Prepare conceptual cost estimate																			
	Prepare presentation	Feb 17-Mar 10																		
<b>City Planning Commission Presentation</b>		March 10																		
Tasks	Integrate Planning Commission Comments	[Red bar from Mar 10 to Mar 17]																		
	Refine presentation materials																			
	Prepare final documents	Mar 10-Mar 17																		
<b>Lone Tree City Council Meeting</b>		March 17																		
	Final Package delivered to City	March 24																		

## EXHIBIT C

City of Lone Tree, Colorado

### Pedestrian Bridge Conceptual Design: Design Fees

Fentress Team | 20140080 | 12 November 2014 Revised 2 December 2014

	Discipline	Consultant	Total per Consultant
1	Architectural	Fentress Architects	\$116,560
2	Cost Estimating	Rider Levitt Bucknall	\$22,500
3	Structural	Buro Happold	\$9,350
4	Electrical/Lighting	ME Engineers/Illume	\$7,700
	<b>Total</b>		<b>\$156,110</b>

Reimbursable Estimate	\$15,611
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**EXHIBIT D**

Fentress Architects  
2014 Hourly Rate Schedule

Curtis Fentress	\$550
Finance	\$50 - \$125
Administration	\$70 - \$135
IT / BIM	\$160 - \$200
Marketing	\$85 - \$150
Model	\$150 - \$200
Intern Architect I	\$80 - \$105
Intern Architect II	\$105 - \$135
Intern Architect III	\$135 - \$175
Architect I	\$130 - \$165
Architect II	\$165 - \$200
Architect III	\$200 - \$275
Project Architect	\$150 - \$250
Project Designer	\$175 - \$350
Project Manager	\$200 - \$425
Specification Writer	\$165 - \$330
Interior Designer I	\$65 - \$90
Interior Designer II	\$90 - \$140
Interior Designer III	\$140 - \$200

**Illegal Aliens:**

The Consultant hereby certifies that at the time of executing this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that it will participate in either the E-Verify Program or Department Program as those terms are defined in C.R.S. §§ 8-17.5-101(3.7) and (3.3), respectively, (the “Programs”) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

The Consultant shall not knowingly employ or contract with an illegal alien to perform the work under this Agreement or enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

The Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

The Consultant is prohibited from using the Programs procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

If the Consultant obtains actual knowledge that a subcontractor performing the work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall: (a) notify the subcontractor and the Owner within three (3) days that the Consultant has actual knowledge that the subcontractor is knowingly employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required by to C.R.S. § 8-17.5-102(2)(III)(A), the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment (the “Department”) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

Any violation of the provisions of this Section shall be deemed to be a material breach of this Agreement and the City may immediately terminate this Agreement for cause based on such violation. If this Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the Owner pursuant to C.R.S. § 8-17.5-102(3) and the City shall notify the office of the Secretary of State of such violation/termination.



CITY OF LONE TREE  
STAFF REPORT

**TO: Mayor Gunning and City Council**

**FROM: Neil Rutledge**

**DATE: December 10, 2014**

**FOR: December 16, 2014 City Council Study Session**

**SUBJECT: FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING REGARDING CULTURAL ARTS CENTER SITE**

Summary

This First Amendment to the Memorandum of Understanding is between the City and Lincoln Commons South (LCS) and Rampart Range Metropolitan District (RRMD). It amends the agreement that resulted in the conveyance of the Arts Center site by LCS to the City in 2010.

As part of the original MOU, LCS donated the Arts Center property to the City, but retained two pads to the east of the building, meant for future construction of restaurants. This Amendment provides for the conveyance of those two pad sites to the City, totaling approximately one-third of an acre. The City will have to pay the \$12,000 per acre RRMD Systems Development Fee required by the District for the properties. Since the City will now own those properties, the License Agreements requiring the City to maintain the pad sites is no longer necessary and is terminated.

Likewise, a Shared Access and Parking Easement Agreement was required as part of the donation of the land to the City. It was meant to accommodate access and parking for patrons of the restaurants, and to allow access to the LCS property just west of the Arts Center. This Agreement is also terminated by the Amendment.

The Amendment to the MOU additionally calls for the City, at its sole cost and expense, to construct a new Main Drive Entrance on the eastern portion of the LTAC property, which would align with a new street, Arts Center Drive, at its intersection with Commons Street. This must be accomplished within one year of the conveyance of the pad sites to the City. This provision is a result of the City's approval of a subdivisions plat with LCS, and negates that condition in the plat notes.

### Cost

The City is required to pay for the construction of the new driveway entrance to the Arts Center, as well as the RRMD Systems Development Fee.

### Suggested Motion

I move to approve the First Amendment to the Memorandum of Understanding Regarding Cultural Arts Center Site

### Background

As part of development projects in Lincoln Commons east of the Arts Center, LCS proposed the construction of a new street to be called Arts Center Drive. The alignment of this street was approved by the City with the acceptance of the recent subdivision plat. The new street originally was off-set from the existing entryway into the Arts Center, enough to cause an unacceptable intersection design.

The City and LCS have agreed by this Amended MOU, that in return for the City paying to move the Arts Center entry drive to align with the new street, the City would be given the two development pads east of the Arts Center. The result is the City will own and control all of the area in front of the Arts Center main entry. The existing shared access and parking easements, as well as license agreements, are no longer needed and are terminated.

**FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING  
REGARDING  
CULTURAL ARTS CENTER SITE**

This FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING is entered into as of \_\_\_\_\_, 2014, among the CITY OF LONE TREE, COLORADO, a Colorado municipal corporation (the "City"), LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("LCS") and RAMPART RANGE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District").

**Recitals**

A. On March 17, 2010, the City, LCS and the District entered into a Memorandum of Understanding Regarding Cultural Arts Center Site (the "MOU"), attached hereto as **Exhibit A**, providing, *inter alia*, for the conveyance of a parcel of land to the City (the "CAC Site") for the construction of a cultural arts center ("CAC"), now known as the Lone Tree Arts Center ("LTAC") and ancillary license and easement agreements.

B. On March 18, 2010, a Special Warranty Deed was recorded in Douglas County at Reception No. 2010017118 (the "Deed"), conveying the land to the City. A Shared Access and Parking Easement Agreement was also recorded on that date in Douglas County at Reception No. 2010017119 (the "Easement"), providing for parking easements, improvements and maintenance on the CAC Site and adjacent areas.

C. By August, 2011, the Lone Tree Arts Center was fully constructed and functioning as a performance and visual arts venue.

D. The parties agree that due to changes in circumstances since the March 17, 2010 Agreement, this First Amendment to the Memorandum of Agreement is proper and necessary.

**Agreement**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, LCS and the District hereby agree to amend the MOU as follows:

1. Amendment to Special Warranty Deed. The parties agree that all the conditions set forth in Section 2 of the MOU for conveyance of the CAC Site to the City were met and LCS conveyed the site to the City by Special Warranty Deed (the "Deed"), attached hereto as **Exhibit B**, reserving to LCS certain rights as set forth in the Deed and conveying all other rights to the City for the Permitted Use as defined in the Deed. The parties agree that the Reservation of Easements contained in Section 6 of the Deed is no longer applicable. Accordingly, LCS agrees to amend the Deed to revoke the Reservation of Easements and strike Section 6 from the Deed. An Amendment to Special Warranty Deed to this effect in the form of **Exhibit C**, (the "Amended Deed"), attached hereto, shall be recorded with the Clerk and Recorder for Douglas County, Colorado.

2. Termination of the Shared Access and Parking Easement Agreement. Associated with the conveyance of the Deed, the City and LCS executed an agreement granting an easement to LCS regarding access to and parking at the CAC Site (the "Shared Access and Parking Easement Agreement"), attached hereto as **Exhibit D**. Due to changes in circumstances, the Shared Access and Parking Easement Agreement is no longer necessary. As a result, the Shared Access and Parking Easement Agreement is hereby terminated and of no further force or effect whatsoever. Likewise, the Grant of Easement contained therein is also hereby revoked and of no further force or effect. An Agreement Terminating the Shared Access and Parking Easement Agreement is attached hereto as **Exhibit E** and shall be signed simultaneously with the Amended Deed and recorded immediately after the Amended Deed with the Clerk and Recorder for Douglas County, Colorado.

3. Termination of License Agreements. Pursuant to the MOU, the City and LCS executed license agreements for each of Lot 1B and Lot 1C (the "Pad Sites"), attached hereto as **Exhibit F** (the "License Agreements"), whereby the City, at the City's expense, installed and maintained irrigated lawn within the Pad Sites. The parties agree that the License Agreements for Lot 1B and Lot 1C are hereby terminated and of no further force or effect. Likewise, the Licenses and their terms contained therein are also hereby revoked and of no further force or effect.

4. Conveyance of Lot 1B and Lot 1C. LCS hereby agrees, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it shall convey Lot 1B and Lot 1C to the City by Special Warranty Deed in the form of **Exhibit G**, attached hereto (the "Pad Sites Deed"), reserving to LCS certain rights and conveying to the City all other rights. The Pad Sites Deed shall be recorded with the Clerk and Recorder for Douglas County, Colorado.

5. Payment of RRMD System Development Fee. Upon conveyance of Lot 1B and Lot 1C to the City, the City shall pay to the District the \$12,000 per acre system development fee charged by the District.

6. Lot 1B and Lot 1C Conveyed AS IS. Lot 1B and Lot 1C will be conveyed to the City AS IS, and the following provisions shall apply to such conveyance:

(a) No Implied Representations. The City acknowledges and agrees that LCS has not made, and LCS specifically disclaims, any representations or warranties of any kind or nature whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to Lots 1B and 1C, including, without limitation: (a) the nature, quality or condition of the lots, including, without limitation, the condition with respect to water, soils or geology; (b) the marketability of the lots, the existence or availability of any entitlement approval or governmental approvals with respect to the lots or any potential to develop, subdivide, zone, construct or alter improvements on, or lease or sell the lots; (c) the habitability, merchantability or fitness for a particular purpose of the lots; or (d) the compliance of or by the lots with any laws, rules, ordinances or regulations of any applicable governmental authority, including, without limitation, Environmental Laws; and that LCS has not made, and LCS specifically disclaims, any representations concerning hazardous materials. The City acknowledges and agrees that the City is relying solely upon its own inspection of Lot 1B and

1C and not upon any information provided by or on behalf of, or to be provided by or on behalf of, LCS or upon any representations made to the City by LCS or any agent, employee, officer, director, broker, contractor or representative of LCS. The City further acknowledges and agrees that any information provided or to be provided with respect to the lots was or may be obtained from a variety of sources and that LCS has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information.

(b) Definitions. As used herein, (i) the term "Environmental Law(s)" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq., the Clean Water Act, 33 U.S.C. Sections 1251 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws, and any other federal, state or local law, statute, rule, regulation or ordinance relating to protection of health, safety or the environment, and (ii) the term "Hazardous Material" means (1) any substance which is designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, toxic substance, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (2) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (3) PCBs, (4) lead, (5) asbestos, (6) flammable explosives, (7) infectious materials, or (8) radioactive materials.

7. Driveway Relocation. Within one year subsequent to the conveyance of Lot 1B and Lot 1C to the City by LCS, the City shall, at the City's sole cost and expense, construct a Main Drive Entrance (the "Entrance") on the eastern portion of the LTAC property in alignment with Arts Center Drive, at its intersection with Commons Street, as described in Plat Note 9 and depicted in RidgeGate Section 15, Filing No. 21. No costs associated with the construction of the Entrance shall be borne by LCS, the District, or the Colony/Rampart Range/RidgeGate development, nor shall any charge be assessed toward the "Shortfall" provisions contained in Section II C of the Annexation and Development Agreement with Colony Investments, Inc./Rampart Range or be attributed towards the City's Total Costs as provided in Section II A (ii) of the Sales Tax Sharing Agreement with Colony Investments, Inc. The parties acknowledge that the Entrance may be located over and through Lot 1B. Because the City has undertaken the obligation to relocate the Entrance pursuant to this Section 7, the City acknowledges and agrees, for the benefit of LCS and its successors and assigns, that the condition to approval of a certificate of occupancy for any development within Filing 21 west of Belvedere Lane stated in Note 9 on the final plat of RidgeGate--Section 15 Filing No. 21 (which states that "Prior to approval of a certificate of occupancy for any development within Filing 21 west of Belvedere Lane, the intersection of Arts Center Drive with Commons Street shall be constructed to be in alignment with the main drive entrance to the adjoining property to the west.") shall no longer be applicable, as indicated on the replat of RidgeGate—Section 15 Filing No. 21, 2<sup>nd</sup> Amendment, and the same shall not be required to be done prior to approval of any such certificate of occupancy.

EXECUTED as of the date first set forth above.

LINCOLN COMMONS SOUTH, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Robert Asselbergs, President

CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By: \_\_\_\_\_  
James D. Gunning, Mayor

By: \_\_\_\_\_  
Neil Rutledge,  
City Attorney

Attest:

By: \_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

RAMPART RANGE METROPOLITAN DISTRICT NO. 1

By: \_\_\_\_\_  
Keith Simon, President

**EXHIBIT A**

**Memorandum of Understanding Regarding Cultural Arts Center Site**

**[See attached]**

**MEMORANDUM OF UNDERSTANDING  
REGARDING  
CULTURAL ARTS CENTER SITE**

THIS MEMORANDUM OF UNDERSTANDING is entered into as of March 17, 2010, among the CITY OF LONE TREE, COLORADO, a Colorado municipal corporation (the "City"), LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("LCS") and RAMPART RANGE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District").

**Recitals**

A. The City has requested that LCS donate to the City a parcel of land as shown on Exhibit A attached hereto (the "CAC Site") for a cultural arts center, the Permitted Use of which is defined in the Special Warranty Deed, and LCS has agreed to donate the CAC Site to the City for such purpose, upon and subject to the terms and conditions set forth in this Agreement.

B. The District has the power to provide the services necessary to support development within its service area, and has agreed to participate in connection with the development of the CAC Site as provided herein.

**Agreement**

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

1. Conveyance of the CAC Site. Upon satisfaction of all the conditions set forth in Section 2 below, LCS shall convey the CAC Site to the City by Special Warranty Deed in the form of Exhibit B attached hereto (the "Deed"), reserving to LCS certain rights as set forth in the Deed and conveying all other rights to the City for the Permitted Use as defined in the Deed; provided, however, that if all the conditions in Section 2 below have not been satisfied prior to the first anniversary of the date hereof, then this Agreement shall automatically terminate on such first anniversary date and the parties shall have no further obligations hereunder, except for any obligations of the City under Section 7 below, which shall survive any such termination.

2. Conditions to Conveyance. LCS's agreement to convey the CAC Site to the City is conditioned upon the following:

(a) Subdivision. The City shall, at the City's sole cost and expense, prepare and process an application for a replat of Lot 1, Block 2, RidgeGate – Section 15 Filing No. 5 ("Lot 1"), subdividing Lot 1 into four lots substantially as shown on Exhibit A attached hereto. As the landowner, LCS will be the applicant on such application, and such application shall be subject to review and approval by LCS prior to submittal. LCS shall not be responsible for any improvements that may be required in connection with such replat and shall not be required to sign a Subdivision Improvements Agreement with respect to the CAC site.

(b) SIP Amendment. The City shall, at the City's sole cost and expense, prepare and process an application for an amendment to the Lincoln Commons South Site Improvement Plan (the "SIP Amendment") to allow for the development of the CAC Site substantially as shown on Exhibit A attached hereto. As the landowner, LCS will be the applicant on such application, and such application shall be subject to review and approval by LCS prior to submittal.

(c) Shared Access and Parking Easement Agreement. The City and LCS shall execute an agreement in the form of Exhibit C attached hereto (the "Shared Access and Parking Easement Agreement"). The Shared Access and Parking Easement Agreement shall be signed simultaneously with the Deed, and shall be recorded immediately after the Deed.

(d) License Agreement. The City and LCS shall agree upon and execute license agreements for each of Lot 1B and Lot 1C (the "Pad Sites") in the form of Exhibit D attached hereto (the "License Agreement") whereby the City shall, at the City's expense, install and maintain irrigated lawn within the Pad Sites until such time as LCS, or subsequent owners of the Pad Sites, elect to prepare the Pad Sites for development.

(e) Construction Contract. The City shall enter into a construction contract for the construction of the Project, and provide a copy thereof to LCS.

3. Development, Ownership and Management of Cultural Arts Facility. The CAC Site shall be developed by the City as a cultural arts center in accordance with the Site Improvement Plan for the Lone Tree Cultural Arts Center (Site Improvement Plan SP09-09R) (the "SIP") (including the improvements described in Section 4 below, the "Project"), for the Permitted Use as defined in the Deed.

4. Construction of Street and Streetscapes. The City shall, as part of the Project and at the City's sole cost and expense (subject to its right to receive reimbursement from the District as provided below), design and construct (a) the access and parking area (paving, curb and gutter) to the west of the CAC Site, and (b) the landscaping, irrigation, sidewalks and street lights within such area and along the portions of RidgeGate Parkway, Commons Street and Sky Ridge Avenue located adjacent to the CAC Site and Pad Sites, all as shown in the SIP. The District shall reimburse the City for all out-of-pocket costs reasonably incurred by the City in performing its obligations under this Section 4 to the extent (and only to the extent) such costs have been approved in writing by the District prior to the City incurring such costs. Such reimbursement shall be paid by the District within 30 days after receipt and approval by the District of copies of invoices evidencing such costs incurred by the City.

5. Payment of RRMD System Development Fee. Upon conveyance of the CAC Site to the City, the City shall pay to the District the \$12,000 per acre system development fee charged by the District.

6. CAC Site Conveyed AS IS. The CAC Site will be conveyed to the City AS IS, and the following provisions shall apply to such conveyance:

(a) No Implied Representations. The City acknowledges and agrees that LCS has not made, and LCS specifically disclaims, any representations or warranties of any

kind or nature whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the CAC Site, including, without limitation: (a) the nature, quality or condition of the CAC Site, including, without limitation, the condition with respect to water, soils or geology; (b) the marketability of the CAC Site, the existence or availability of any entitlement approval or governmental approvals with respect to the CAC Site or any potential to develop, subdivide, zone, construct or alter improvements on, or lease or sell the CAC Site; (c) the habitability, merchantability or fitness for a particular purpose of the CAC Site; or (d) the compliance of or by the CAC Site with any laws, rules, ordinances or regulations of any applicable governmental authority, including, without limitation, Environmental Laws; and that LCS has not made, and LCS specifically disclaims, any representations concerning hazardous materials. The City acknowledges and agrees that the City is relying solely upon its own inspection of the CAC Site and not upon any information provided by or on behalf of, or to be provided by or on behalf of, LCS or upon any representations made to the City by LCS or any agent, employee, officer, director, broker, contractor or representative of LCS. The City further acknowledges and agrees that any information provided or to be provided with respect to the CAC Site was or may be obtained from a variety of sources and that LCS has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information.

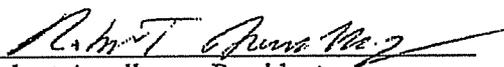
(b) Definitions. As used herein, (i) the term "Environmental Law(s)" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq., the Clean Water Act, 33 U.S.C. Sections 1251 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws, and any other federal, state or local law, statute, rule, regulation or ordinance relating to protection of health, safety or the environment, and (ii) the term "Hazardous Material" means (1) any substance which is designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, toxic substance, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (2) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (3) PCBs, (4) lead, (5) asbestos, (6) flammable explosives, (7) infectious materials, or (8) radioactive materials.

7. Mechanic's Liens. The City shall keep Lot 1 free from all liens of all planners, engineers, surveyors, architects, contractors or other parties engaged by the City in connection with the Project. If any such lien shall be filed, the City shall cause the lien to be released of record within thirty (30) days after it is filed by payment, posting of a statutory bond with the appropriate court, or otherwise. If a final judgment establishing the validity or existence of a lien for any amount is entered, the City shall pay and satisfy the same at once. The City shall indemnify, hold harmless and defend LCS against such liens, and shall pay and satisfy any adverse judgment that may be rendered before the enforcement thereof against LCS or Lot 1. If the City fails to pay any charge for which any such lien has been filed and the lien is not discharged of record as described above, LCS, at its option, may pay such charge and related costs and interest, or may obtain and post a statutory surety bond, and the amount paid by LCS,

together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from the City to LCS. Any such amounts not paid when due shall accrue interest at the rate of 18% per annum from the date due until paid in full.

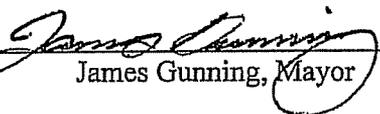
EXECUTED as of the date first set forth above.

LINCOLN COMMONS SOUTH, INC.,  
a Delaware corporation

By:   
Robert Asselbergs, President

CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By:   
James Gunning, Mayor

By:   
Neil Rutledge,  
Assistant City Attorney

Attest:

By:   
Jennifer Pettinger, CMC, City Clerk

RAMPART RANGE METROPOLITAN DISTRICT NO. 1

By:   
Keith Simon, President

**EXHIBIT A**

**Site Plan**

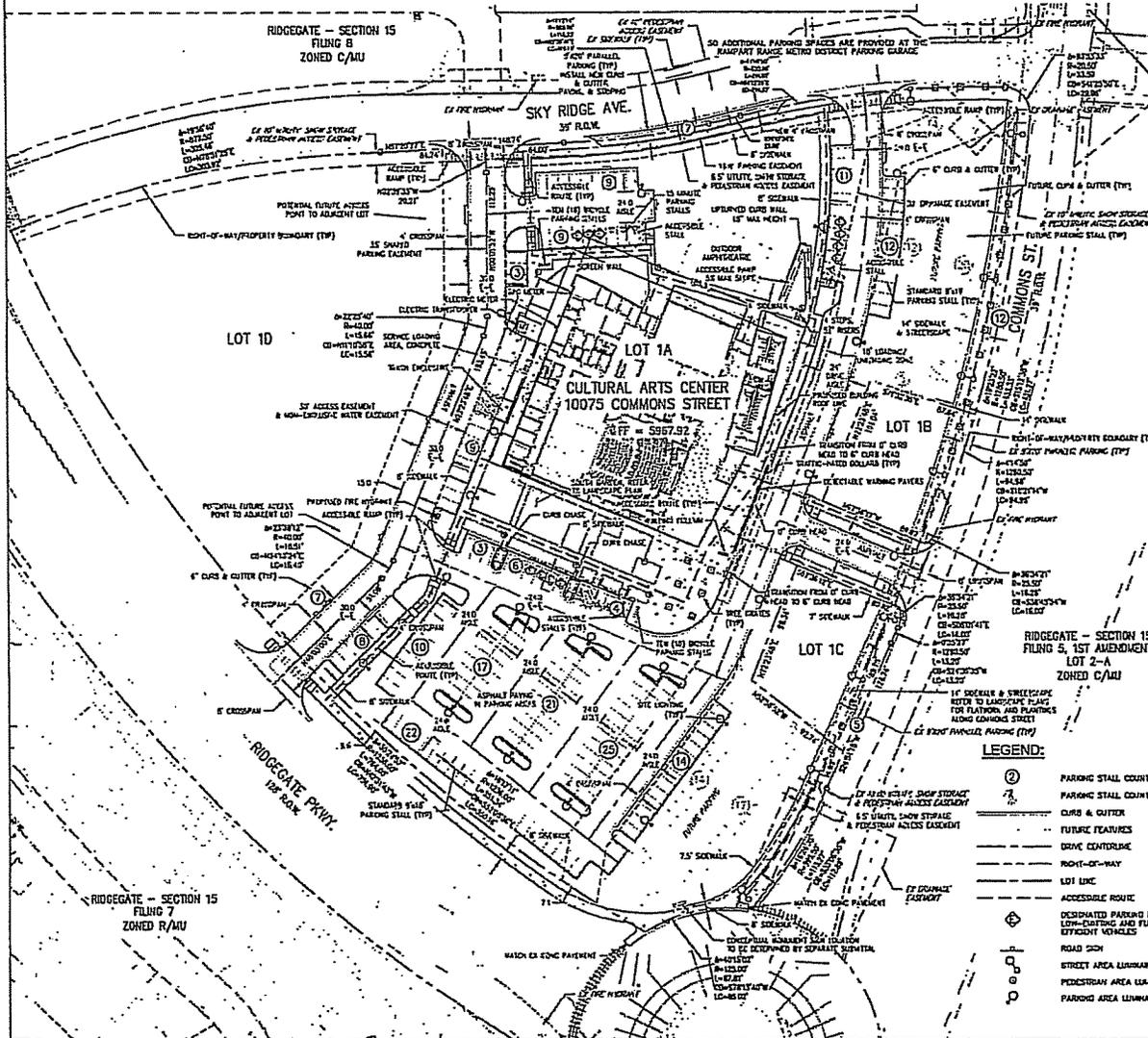
**[see attached]**

A-1

#1445433 v5 den

RIDGEGATE SECTION 15, FILING NO. 5, 3RD AMENDMENT,  
 LOT 1A, BLOCK 2 CMU #1  
 TOWN CENTER WEST, A PART OF PHASE II AT LINCOLN COMMONS (#SP08-03R) SITE  
 IMPROVEMENT PLAN SP09-09R

Issued / Revised		
No.	Date	Description
001	02/20/14	Revised SIP Submittal



**PROJECT INFORMATION**

LOT: RIDGEGATE - SECTION 15 FILING NO. 5, LOT 1, BLOCK 2  
 PROPOSED USE: THEATRE, EVENT CENTER  
 EX ZONING: COMMERCIAL/ARTS USE (CAAU)  
 JURISDICTION: COMMERCIAL/ARTS USE (CAAU) CITY OF LONE TREE, COLORADO

**PROPERTY DATA**

OVERALL LOT AREA	AREA(AC)	AREA(SQ)
CULTURAL ARTS CENTER	2.25±	274,494±
FUTURE LOT A	0.1±	7,972±
FUTURE LOT B	0.19±	8,172±
FUTURE LOT C	2.2±	98,572±

**PARKING**

**MINIMUM DESIGN CRITERIA:**  
 STANDARD STALLS: 8' WIDE X 18' LENGTH  
 PARALLEL PARKING: 8' WIDE X 20' LENGTH  
 ACCESSIBLE STALLS: 8' WIDE X 18' LENGTH  
 STALLS: 8' WIDE X 18' LENGTH  
 50% VEH ACCESSIBLE: 8' WIDE X 18' LENGTH

**SITE DATA TABLE**

Item	Quantity	% of Total
Standard Stalls	214	12%
Parallel Parking	20	1%
Future Features	10	0.5%
Drive Centers	10	0.5%
Right-of-Way	10	0.5%
Lot Line	10	0.5%
Accessible Route	10	0.5%
Designated Parking	10	0.5%
Road Sign	10	0.5%
Street Area Luminare	10	0.5%
Pedestrian Area Luminare	10	0.5%
Parking Area Luminare	10	0.5%

**LEGEND:**

- ② PARKING STALL COUNT (NEW)
- ③ PARKING STALL COUNT (FUTURE)
- DRIVE & CUTTER
- FUTURE FEATURES
- DRIVE CENTERLINE
- RIGHT-OF-WAY
- LOT LINE
- ACCESSIBLE ROUTE
- DESIGNATED PARKING FOR LOW-COSTING AND FUEL-EFFICIENT VEHICLES
- ROAD SIGN
- STREET AREA LUMINAIRE - LANCE
- PEDESTRIAN AREA LUMINAIRE - MIDDLEMARK
- PARKING AREA LUMINAIRE - MERRICK-EDISON

LONE TREE CULTURAL ARTS CENTER

Commission #09054.00  
 Lone Tree, CO



2420 S. Foothills  
 Aurora, CO 80014  
 303.751.0141

Site Plan  
 Sheet 2 of 17

C-01



**EXHIBIT B**

**EXEMPT FROM DOCUMENTARY FEE PER C.R.S. 39-13-104(1)(A)**

**SPECIAL WARRANTY DEED**

LINCOLN COMMONS SOUTH, INC., a Delaware corporation (“Grantor”) hereby sells and conveys to the CITY OF LONE TREE, COLORADO, municipal corporation of the State of Colorado (“Grantee”), whose address is 9220 Kimmer Drive, Suite 100, Lone Tree, CO 80124, Lot 1A, RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado (the “Property”), together with all its appurtenances, excepting the Reserved Rights (as defined below), and Grantor warrants the title to the same against all persons claiming by, through or under Grantor, subject to all matters of record.

Grantor and Grantee agree that the following terms and provisions are an integral part of this Deed and that this Deed is given and accepted, and the Property is conveyed, upon and subject to the following terms and provisions. Acceptance of this Deed by Grantee shall constitute the agreement by Grantee, for itself and its successors and assigns, to be bound by and to comply with the following reservations, covenants, conditions and restrictions, which shall constitute covenants and equitable servitudes running with the land and binding on subsequent owners of the Property (except that all of the following reservations, covenants, conditions and restrictions shall be null and void and of no further force or effect in the event that Grantor reacquires title to the Property at any time):

1. Limitation on Use of Property. Grantee acknowledges that Grantor is conveying the Property to Grantee solely for the purpose of constructing a cultural arts center thereon, consisting of the facilities identified on the approved Site Improvement Plan for the Lone Tree Cultural Arts Center (Site Improvement Plan SP09-09R) (the “SIP”), and Grantee covenants and agrees that the Property shall be used solely for such cultural arts center for a period of at least fifteen (15) years (the “Permitted Use”). The Property shall be owned by Grantee and managed by or under the direction of Grantee. The Grantee may contract for the independent management and operation of the Property and may sell, convey or transfer the Property, subject to a specific covenant incorporating the Permitted Use of the Property. The foregoing covenant is for the benefit of, and shall be enforceable by and at the discretion of Grantor or its successor-in-interest, and no other third party shall have any rights with respect thereto. Grantor agrees that in the event that the Property is sold or transferred by Grantee in violation of this Section 1, the Grantor shall receive payment of the Land Price as provided in Section 4 below. Following the fifteenth anniversary of the recording of this Deed, this covenant regarding the Permitted Use and the Limitation on Use of Property shall expire and shall be of no force and effect

2. Design Review. As provided in Section III(g) of the RidgeGate Planned Development District, LCS will be entitled to participate in all design reviews related to the facilities to be constructed on the Property to ensure that the quality of the project is consistent with the quality envisioned for RidgeGate, as reflected in City and project development standards.

3. Repurchase Option for Failure to Commence Construction. Grantor hereby reserves an option to repurchase the Property (the “Failure to Commence Construction Repurchase

Option”) in the event that construction of a cultural arts center in accordance with the SIP has not commenced on the Property within five (5) years after the date of recording of this Special Warranty Deed (the “Construction Deadline”). Grantor shall have the right to exercise the Failure to Commence Construction Repurchase Option by giving Grantee written notice of exercise within 180 days after the Construction Deadline. Within 60 days after Grantor gives notice of the exercise of the Failure to Commence Construction Repurchase Option, Grantee shall tender to Grantor Grantee's Special Warranty Deed for the Property in exchange for "good funds," as defined under Colorado law, from Grantor in the amount of Ten Dollars (\$10.00) (the “Failure to Commence Construction Repurchase Price”). Grantee shall deliver title to Grantor at the closing of the Failure to Commence Construction Repurchase Option in the same condition as when delivered by Grantor to Grantee by this Deed. Grantee agrees to pay all costs and expenses for such closing, including the premium for a standard title insurance policy, insuring that title to the Property is vested in Grantor. For purposes of this Section 3, construction shall be deemed to have commenced upon the pouring of the foundation for the community arts center.

4. Payment of Land Price to Grantor if Property is Sold or Transferred. Grantee acknowledges and agrees that Grantor is donating the Property to Grantee pursuant to this Deed on the condition that Grantee abides by the Permitted Use and the Limitation on Use of Property as stated in Section 1 of this Deed for a period of at least fifteen (15) years. Accordingly, in the event of any sale or other transfer of the Property in violation of Section 1 of this Deed to any third party on or before the fifteenth anniversary of the date of recording of this Deed, Grantee shall pay to Grantor in immediately available funds, on or before the date of any such sale or transfer (the “Due Date”), the sum of \$2,075,634, escalating from and after the date hereof at a rate of 3% per annum, compounded annually (with such annual escalations occurring on each anniversary of the date of recording of this Deed) (the “Land Price”). Grantor hereby reserves the right to place a lien on the Property in order to secure payment of the Land Price, plus interest thereon from and after the Due Date until paid in full at the rate of 12% per annum, and any costs incurred by Grantor in the collection thereof (including, without limitation, reasonable attorneys’ fees) upon a conveyance in violation of Section 1 of this Deed before at least fifteen (15) years.

5. Reservation of Water and Mineral Rights. Grantor excepts from the Property hereby conveyed and reserves to itself and its successors and assigns (i) all rights, title and interest in and to all adjudicated and undecreed water, ditch, reservoir, well, spring, seepage and pond rights, and any other types of rights to the ownership and/or use of water, tributary, non-tributary and not non-tributary, appurtenant to, historically used in connection with, or otherwise in any way related to the Property, and (ii) all minerals, oil, gas, geothermal rights, gravel and other minerals lying in, on or under or appurtenant to the Property (collectively, the Reserved Rights”), provided that no extraction, use or enjoyment of such Reserved Rights shall impair any subjacent or lateral support for improvements on the Property.

6. Reservation of Easements. Grantor excepts from the Property hereby conveyed and reserves unto itself and its successors and assigns, (a) a perpetual, non-exclusive easement on, over, under, through and across all of the access and parking areas within the Property as shown in the SIP for (i) vehicular and pedestrian access to and from Lots 1B and 1C, RidgeGate –

Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado, and the construction and use of parking spaces in accordance with the provisions of the Shared Access and Parking Easement Agreement between Grantor and Grantee dated of even date herewith, and (ii) construction, installation, use, operation, maintenance, repair and replacement of utilities (including, without limitation, water, sewer, gas, electric, telephone, cable and fiber optic lines and related appurtenances), and (b) a perpetual, non-exclusive easement on, over, under, through and across the portion of the Property labeled as "30' Public Access and Utility Easement" on the final plat of RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment for vehicular and pedestrian access to and from Lot 1D, RidgeGate-Section 15 Filing No. 5, 3<sup>rd</sup> Amendment.

SIGNED this \_\_\_\_ day of March, 2010.

LINCOLN COMMONS SOUTH, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Robert Asselbergs, President

ACCEPTANCE

THE CITY OF LONE TREE, COLORADO hereby accepts the real property conveyed herein this \_\_\_\_ day of March, 2010.

CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By: \_\_\_\_\_  
James Gunning, Mayor

By: \_\_\_\_\_  
Neil Rutledge,  
Assistant City Attorney

Attest:

By: \_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk



**EXHIBIT C**

**SHARED ACCESS AND PARKING EASEMENT AGREEMENT**

THIS SHARED ACCESS AND PARKING EASEMENT AGREEMENT (this "Agreement") is entered into as of March \_\_\_\_, 2010, by and between LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("LCS") and the CITY OF LONE TREE, COLORADO, a Colorado municipal corporation ("City").

**Recitals**

A. Concurrently with the execution of this Agreement, LCS has conveyed to City Lot 1A, RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado ("Lot 1A"), and LCS is the owner of Lot 1B, Lot 1C, and Lot 1D RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado ("Lot 1B," "Lot 1C" and "Lot 1D" respectively). Lot 1A, Lot 1B and Lot 1C are sometimes referred to herein collectively as the "Lots" or individually, as a "Lot".

B. The owner from time to time of Lot 1A is referred to herein as "Lot 1A Owner," the owner from time to time of Lot 1B is referred to herein as "Lot 1B Owner" and the owner from time to time of Lot 1C is referred to herein as "Lot 1C Owner." Such parties are sometimes referred to herein collectively as the "Owners" or individually as an "Owner."

C. As a condition to the conveyance of Lot 1A by LCS to City, City agreed (i) to grant to LCS an easement on, over, across and through all of the parking areas and drive aisles to be constructed as provided below within Lot 1A (the "Easement Area") for access and parking for the benefit of each of Lot 1B and Lot 1C, and (ii) to construct, operate, maintain, repair and replace the Easement Area and the portion of the area labeled as "30' Public Access and Utilities Easement" on the final plat of RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado (the "30' Access Easement Area") located on Lot 1D, and improvements thereon, upon and subject to the terms and conditions set forth in this Agreement.

**Agreement**

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. **Grant of Easement.** City hereby grants to LCS a perpetual, non-exclusive easement on, over, across and through the Easement Area for pedestrian and vehicular access and parking of vehicles by Lot 1B Owner and Lot 1C Owner, their tenants and subtenants, and all of their respective agents, representatives, employees, contractors, licensees, invitees, customers and guests (collectively "Permittees"). All of the Owners and their respective Permittees shall have the right to use the parking spaces within the Easement Area on a "first come, first served" basis.

**2. Design and Construction of Improvements.**

(a) City shall, in connection with the construction of the cultural arts center on Lot 1A and at the City's sole cost and expense, design, construct and install all of the access and parking area improvements (including paving, curb and gutter, drainage facilities, lighting and landscaping) within Lot 1A substantially as shown in the Site Improvement Plan for the Lone Tree Cultural Arts Center (Site Improvement Plan SP09-09R) (the "SIP"), except for those areas labeled "Future Parking" on the SIP located to the north of Lot 1B (the "Lot 1B Future Parking Area") and to the south of Lot 1C (the "Lot 1C Future Parking Area"). The Lot 1B Future Parking Area and Lot 1C Future Parking Area are sometimes collectively referred to in this Agreement as the "Future Parking Areas." City shall, at City's sole cost and expense, install an irrigation system and lawn within the Future Parking Areas, which City shall maintain as irrigated turf until such time as the Future Parking Areas are developed as paved parking areas, as provided below. Lot 1A Owner shall not change the location or configuration of the parking spaces and drive aisles from that shown on the SIP without the prior written approval of all of the Owners.

(b) Lot 1B Owner shall, at Lot 1B Owner's sole cost and expense, have the right at any time (but not later than such time as a certificate of occupancy is issued for any building constructed on Lot 1B) to construct the access and parking improvements within the Lot 1B Future Parking Area, or so much thereof as is required to satisfy parking requirements applicable to the use being made of Lot 1B, substantially as shown in the SIP. City shall cooperate in connection with any modifications to the existing improvements and irrigation system as may be necessary to allow for construction of such improvements. Notwithstanding the shared use thereof allowed under this Agreement, all parking spaces located within the Lot 1B Future Parking Area shall be counted towards the parking requirements applicable to the use on Lot 1B.

(c) Lot 1C Owner shall, at Lot 1C Owner's sole cost and expense, have the right at any time (but not later than such time as a certificate of occupancy is issued for any building constructed on Lot 1C) to construct the access and parking improvements within the Lot 1C Future Parking Area, or so much thereof as is required to satisfy parking requirements applicable to the use being made of Lot 1C, substantially as shown in the SIP. City shall cooperate in connection with any modifications to the existing improvements and irrigation system as may be necessary to allow for construction of such improvements. Notwithstanding the shared use thereof allowed under this Agreement, all parking spaces located within the Lot 1C Future Parking Area shall be counted towards the parking requirements applicable to the use on Lot 1C.

**3. Operation, Maintenance, Repair and Replacement of Easement Area and Improvements.**

(a) Lot 1A Owner shall at all times operate and maintain the Easement Area and the portion of the 30' Access Easement Area located on Lot 1D, including the Future Parking Areas, and all paving, curb and gutter, lighting, landscaping and irrigation systems, and other improvements thereon (the "Improvements") in first-class order, condition and repair. The foregoing shall include, without limitation, snow removal, and lighting of the Easement Area during at least the hours of operation of each of the businesses on Lot 1B and Lot 1C. Upon

request by any Owner, Lot 1A Owner shall designate and reserve in total an amount of no more than 25 parking spaces ("Valet Parking Spaces") within the Easement Area, at a location or locations mutually acceptable to all the Owners, for use solely for valet parking by the Owners on a "first come, first served" basis (or upon such other terms and conditions as all of the Owners may agree in writing). Lot 1A Owner shall post the Valet Parking Spaces with signs stating that they are reserved for valet parking, and that violators will be towed at the violator's expense.

(b) Lot 1A Owner shall be solely responsible for all costs of operation, maintenance, repair and replacement of the Easement Area and Improvements (collectively, the "Easement Costs") during the period of time prior to the date on which a business is opened on either of Lot 1B or Lot 1C. Except as provided in subsections 3(c) and 3(h) below, (i) from and after the date on which a business is open to the public on Lot 1B, Lot 1B Owner shall reimburse Lot 1A Owner for a share of the Easement Costs equal to a fraction, the numerator of which is the number of parking spaces required by applicable zoning for the use on Lot 2 and the denominator of which is the total number of parking spaces located within the entire Easement Area, and (ii) from and after the date on which a business is open to the public on Lot 1C, Lot 1C Owner shall reimburse Lot 1A Owner for a share of the Easement Costs equal to a fraction, the numerator of which is the number of parking spaces required by applicable zoning for the use on Lot 1C and the denominator of which is the total number of parking spaces located within the entire Easement Area. Such reimbursement shall be due and payable within 30 days after receipt of request for reimbursement from Lot 1A Owner, accompanied by copies of invoices evidencing expenses incurred by Lot 1A Owner in connection therewith.

(c) If any Owner, or such Owner's Permittees, damages the Improvements or Easement Area, or causes any obstruction of the Easement Area, such Owner (the "Responsible Owner") shall promptly cause such damage to be repaired or obstruction to be removed at the Responsible Owner's sole cost and expense. If the Responsible Owner fails to promptly complete such repair or removal, then either of the other Owners (the "Performing Owner") shall have the right to cause such repair or removal to be performed and the Responsible Owner shall reimburse the Performing Owner for all costs reasonably incurred by the Performing Owner in connection therewith. Such reimbursement shall be due and payable within 30 days after receipt of request for reimbursement from the Performing Owner, accompanied by copies of invoices evidencing expenses incurred by the Performing Owner in connection therewith.

(d) If Lot 1 Owner fails to timely perform any of its obligations under this Section 3, either of the other Owners may cause to be performed such repair or maintenance work as such Owner reasonably deems necessary to maintain the Improvements and the Easement Area in a first class condition. Such Owner shall be entitled to reimbursement from the other Owners for their respective share of any costs incurred by such Owner in connection therewith (so that each Owner pays the share of such costs that each would be responsible for if such work had been performed by Lot 1A Owner as provided in subsection 3(b) above and 3(h) below), which reimbursement shall be due and payable within 30 days after receipt of a request for reimbursement, accompanied by copies of invoices evidencing such costs.

(e) All work in the Easement Area shall be performed in a good and workmanlike manner in compliance with all applicable laws, rules, regulations, ordinances and other

requirements of governmental authorities, and in a manner which will, to the extent reasonably practicable, minimize disturbance of the Easement Area and interference with the Owners' use of the Easement Area. All such work shall be diligently pursued to completion. Except in case of emergency, an Owner performing any such work shall give the other Owners reasonable advance notice thereof.

(f) The Owner completing the Improvements or performing any other work on the Easement Area shall pay for all labor and materials relating to or furnished in connection therewith and shall not cause or permit the Easement Area to be encumbered by any mechanics' or materialmen's liens relating thereto; and if any such lien claim is recorded, such Owner shall cause the same to be released of record, by bonding or any other means available, within thirty (30) days of its recordation.

(g) Any reimbursement amount not paid when due hereunder shall bear interest at the rate of ten (10) percent per annum from the date due until paid.

(h) Lot 1A Owner shall be solely responsible for all costs of operation, maintenance, repair and replacement of the 30' Access Easement Area and Improvements located thereon, without any reimbursement from any other parties. This obligation, and the obligation to maintain the 30' Access Easement Area as provided in subsection 3(a) above, shall run to the benefit of all of Lots 1B, 1C and 1D, and the owner from time to time of Lot 1D ("Lot 1D Owner") shall have all the rights of an Owner with respect thereto (including, without limitation, the rights of an Owner under subsection 3(d) above with respect to the 30' Access Easement Area).

#### 4. Reimbursement for Portion of Development Fee.

(a) Not later than the date of issuance of a building permit for the construction of a building on Lot 1B, Lot 1B Owner shall reimburse City for a share of the 12,000 per acre development fee for Lot 1 paid by City to Rampart Range Metropolitan District No. 1 (the "Development Fee") equal to a fraction, the numerator of which is the square footage of the Lot 1B Future Parking Area, or portion thereof that Lot 1B Owner is obligated to construct as provided in Section 2(b) above, and the denominator of which is the square footage of Lot 1A.

(b) Not later than the date of issuance of a building permit for the construction of a building on Lot 1C, Lot 1C Owner shall reimburse City for a share of the Development Fee equal to a fraction, the numerator of which is the square footage of the Lot 1C Future Parking Area, or portion thereof that Lot 1C Owner is obligated to construct as provided in Section 2(c) above, and the denominator of which is the square footage of Lot 1A.

5. Notices. Any notice, request, demand, consent, approval or other communication required or permitted under the terms of this Agreement shall be in writing and shall be deemed given and received (i) when hand delivered to the intended recipient; (ii) three (3) days after the same is deposited in the United States mail, with adequate postage prepaid, and sent by certified mail, return receipt requested; (iii) one (1) business day after the same is deposited with an overnight courier service of national or international reputation having a delivery area

encompassing the address of the intended recipient; or (iv) if sent by facsimile to the applicable facsimile number set forth below, when delivery has been electronically confirmed by the recipient's facsimile machine, as evidenced by the written confirmation produced by the sender's facsimile machine. The applicable addresses and facsimile numbers for notice purposes are initially as follows:

to City (as Owner of Lot 1A):

City of Lone Tree  
9220 Kimmer Drive, Suite 100  
Lone Tree, CO 80124  
Attention: Jack Hidahl, City Manager  
Facsimile: (303) 225-4949  
Telephone: (303) 708-1818

with a copy to:

White, Bear & Ankele, P.C.  
1805 Shea Center Dr., Suite 100  
Highlands Ranch, CO 80129  
Attention: Gary White  
Facsimile: (303) 858-1801  
Telephone:(303) 858-1800

to LCS (as Owner of Lot 1B, Lot 1C and Lot 1D):

Lincoln Commons South, Inc.  
c/o Coventry Development Corporation  
1041 Third Avenue, Suite 200  
New York, NY 10065  
Attention: Robert Asselbergs  
Facsimile: (212) 752-5407  
Telephone: (212) 752-6164

with a copy to:

Holme Roberts & Owen  
1700 Lincoln Street, Suite 4100  
Denver, CO 80203  
Attention: Paul Timmins  
Facsimile: (303) 866-0200  
Telephone: (303) 866-0601

Any party may change its address and/or fax number for notices pursuant to a written notice which is given in accordance with the terms hereof. If any subsequent Owner fails to give notice of its address for notices in accordance with the foregoing, then any notice to such Owner may be delivered to such Owner's address stated in any recorded deed by which it took title to a Lot, or to the address listed in the Douglas County Assessor's records for delivery of real property tax statements for such Lot. Any notice may be given on behalf of either party by its legal counsel or other authorized representative. As used herein, the term "business day" shall mean any day other than a Saturday, a Sunday, or a legal holiday for which U.S. Mail service is not provided.

6. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

7. **No Partnership or Joint Venture.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

8. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. **Estoppel Certificates.** Each Owner (the "Issuing Owner") agrees, that upon written request from the other Owner (the "Requesting Owner"), to provide the Requesting Owner or its first mortgagee, potential mortgagee, or successor, within 15 business days following such request, an estoppel certificate stating to the best of the Issuing Owner's knowledge as of such date (a) whether the Issuing Owner knows of any default by the Requesting Owner of this Agreement, as it may be amended from time to time, and if there are known defaults, specifying the nature thereof in reasonable detail; (b) whether this Agreement has been supplemented, assigned, modified, or amended in any way, and if so, then stating the nature thereof in reasonable detail; and (c) whether this Agreement is in full force and effect. Failure of the Issuing Owner to provide the estoppel certificate within the time set forth above shall be deemed an acknowledgment by the Issuing Owner that (i) there is no default under this Agreement; (ii) there has been no amendment, modification, supplementation, or assignment of this Agreement; and (iii) this Agreement is in full force and effect.

10. **Covenants Run With the Land.** Each of the agreements, covenants, conditions, and provisions contained in this Agreement shall run with and be binding upon each of the Lots and the current and future Owners thereof; provided, however, that each Owner's obligations under this Agreement with respect to any Lot shall be limited to those obligations and liabilities arising or accruing under this Agreement during such Owner's ownership of such Lot.

11. **Remedies.** No breach of any of the provisions of this Agreement will entitle Lot 1 Owner to cancel, rescind or otherwise terminate the easements or any rights granted herein. Each Owner shall be entitled to all other remedies at law or in equity for any breach of this Agreement, including, without limitation, actions for specific performance, injunctive or mandamus relief. All rights and remedies of the Owners are cumulative and the exercise by an Owner of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies.

12. **Attorneys' Fees.** In any action brought to enforce any provision of this Agreement, or to obtain a declaration of the rights or responsibilities of any party hereunder, the

prevailing party shall be awarded all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such party in connection therewith.

13. **No Implied Waiver.** The failure or delay of any Owner to exercise any of its rights under this Agreement shall not constitute a waiver of any such rights. No Owner shall be deemed to have waived any right under this Agreement unless such waiver is made expressly and in writing, and no waiver made as to any instance or any particular right shall be deemed a waiver as to any other instance or any other right.

14. **Interpretation.** This Agreement shall be interpreted in accordance with its fair meaning and shall not be interpreted in favor of either party by reason of either party having drafted any particular provision. No inference in favor of or against either party shall be drawn from the fact that such party has drafted any portion of this Agreement. The parties have both participated substantially in the negotiation, drafting and revision of this Agreement with representation by counsel and such other advisers as they have deemed appropriate.

15. **Headings.** The section headings used in this Agreement are for convenience only and shall not be considered in construing the meaning of any provision of this Agreement.

16. **No Third Party Beneficiaries.** No person or entity other than the Owners and Lot 1D Owner shall have any right, benefit or obligation under this Agreement as a third party beneficiary or otherwise. Without limiting the foregoing, nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Area, Lots or any other property to the general public, it being the intention that the Easement and rights granted hereby shall be limited to and for the purposes herein specified.

17. **Recording.** This Agreement shall be recorded in the real property records of Douglas County, Colorado.

[signatures appear on following page]

EXECUTED as of the date first set forth above.

LINCOLN COMMONS SOUTH, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Robert Asselbergs, President

CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By: \_\_\_\_\_  
James Gunning, Mayor

By: \_\_\_\_\_  
Neil Rutledge,  
Assistant City Attorney

Attest:

By: \_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk



EXHIBIT D

LICENSE AGREEMENT  
(Lots [1B/1C])

This License Agreement (this "Agreement"), dated as of \_\_\_\_\_, 2010, is between LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("Owner") and the CITY OF LONE TREE, COLORADO, a Colorado municipal corporation ("Licensee").

Recitals

A. LCS is the owner of Lot [1B/1C], RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado (the "Property").

B. Pursuant to the Memorandum of Understanding Regarding Cultural Arts Center Site between Owner and Licensee dated \_\_\_\_\_, 2010 (the "MOU"), Owner and Licensee have agreed that Licensee shall install an irrigation system and lawn within the Property, and maintain the Property as irrigated turf until such time as the owner of the Property elects to prepare the Property for development.

C. The Owner and Licensee acknowledge that this License Agreement satisfies the condition of Section 2(d) of the MOU.

Agreement

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Licensee agree as follows:

1. Grant of License. Owner hereby grants a license ("License") to Licensee to enter onto the Property at all times during the Term (as defined below) for the sole purpose of installing an irrigation system (the "Irrigation System") and lawn, and thereafter operating and maintaining such Irrigation System and lawn (including, without limitation, watering, mowing, aerating, weeding and fertilizing as needed), on the terms and conditions set forth in this Agreement.

2. Term. The term of this License ("Term") shall commence on the date hereof, and shall expire at such time as Owner notifies Licensee of Owner's election to prepare the Property for development.

3. Installation and Maintenance of Irrigated Turf. Licensee shall, at Licensee's sole cost and expense and at such time as Licensee constructs the cultural arts center on Licensee's adjacent property, install the Irrigation System and lawn on all of the Property, and at all times thereafter during the Term, maintain the same in a first class condition consistent with the manner in which the City maintains the Cultural Arts Center site.

4. Removal of Irrigation System. Licensee may, within 30 days after the expiration of the Term, remove the Irrigation System from the Property. If Licensee fails to remove the Irrigation System within such 30-day period, Owner shall have the right to have the Irrigation System removed, and may dispose of it in any manner Licensee deems appropriate, without any cost, obligation or liability to Licensee.

5. Condition of Property. Licensee accepts the Property in its current condition, AS IS, with all faults, latent or patent. Licensee acknowledges and agrees that Licensee has examined or has been afforded a reasonable opportunity to examine all matters concerning the Property that Licensee deems material to this License and Licensee's use of the Property, and Licensee is relying solely upon its own judgment and expertise as to such matters, the condition of the Property and its suitability for use. Owner has not made and does not hereby make any representations or warranties to Licensee that the Property is suitable or adequate in any respect for the activities or uses that Licensee intends to conduct or may conduct thereon.

6. Obligations of Licensee. Licensee shall promptly repair any damage to the Property that is caused by Licensee or Licensee's employees or agents.

7. Indemnity. To the extent permitted by law, Licensee shall indemnify, defend and hold Owner harmless from and against any and all claims, liabilities, losses, damages, actions, fines, penalties, costs and expenses of any kind or nature (including without limitation, reasonable attorneys' fees and disbursements), in any way arising out of or related to the use of the Property by Licensee or Licensee's employees, contractors or agents, and/or any breach by Licensee of the terms of this Agreement.

8. Insurance. Licensee shall, at Licensee's sole cost and expense, maintain a policy of insurance in form and amounts, and with an insurance company, reasonably acceptable to Owner insuring the liability of Licensee under this Agreement and naming Owner as an additional named insured. Licensee shall, prior to entering onto the Property, provide Owner with a certified copy of such policy or a certificate acceptable to Owner which names Owner as an additional named insured and provides that such policy cannot be canceled or amended without 30 days prior written notice to Owner. In addition, Licensee shall maintain any workers compensation insurance required to be carried by Licensee under applicable law, and shall provide evidence thereof satisfactory to Owner prior to entering onto the Property.

9. Mechanic's Liens. Licensee shall keep the Property free from all liens of all planners, engineers, surveyors, architects, contractors or other parties engaged by Licensee in connection with exercise by Licensee of its rights, and performance of its obligations, under this Agreement. If any such lien shall be filed, Licensee shall cause the lien to be released of record within thirty (30) days after it is filed by payment, posting of a statutory bond with the appropriate court, or otherwise. If a final judgment establishing the validity or existence of a lien for any amount is entered, Licensee shall pay and satisfy the same at once. Licensee shall indemnify, hold harmless and defend Owner against such liens, and shall pay and satisfy any adverse judgment that may be rendered before the enforcement thereof against Owner or the Property. If Licensee fails to pay any charge for which any such lien has been filed and the lien is not discharged of record as described above, Owner, at its option, may pay such charge and related costs and interest, or may obtain and post a statutory surety bond, and the amount paid by

Owner, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Licensee to Owner. Any such amounts not paid when due shall accrue interest at the rate of 18% per annum from the date due until paid in full.

10. Enforcement. Each party shall be entitled to all remedies at law or in equity for the enforcement of this Agreement. In any action brought to enforce or contest any provision of this Agreement, or to obtain a declaration of the rights or obligations of any party hereunder, the prevailing party shall be entitled to recover all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such party in connection with such action.

11. Binding effect. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

OWNER:

LINCOLN COMMONS SOUTH, INC.

By: \_\_\_\_\_  
Robert Asselbergs, President

LICENSEE:

CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By: \_\_\_\_\_  
James Gunning, Mayor

By: \_\_\_\_\_  
Neil Rutledge,  
Assistant City Attorney

Attest:

By: \_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

**EXHIBIT B**

**Special Warranty Deed**

**Cultural Arts Center**

**[See attached]**

**EXEMPT FROM DOCUMENTARY FEE PER C.R.S. 39-13-104(1)(A)**

**SPECIAL WARRANTY DEED**

LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("Grantor") hereby sells and conveys to the CITY OF LONE TREE, COLORADO, municipal corporation of the State of Colorado ("Grantee"), whose address is 9220 Kimmer Drive, Suite 100, Lone Tree, CO 80124, Lot 1A, RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado (the "Property"), together with all its appurtenances, excepting the Reserved Rights (as defined below), and Grantor warrants the title to the same against all persons claiming by, through or under Grantor, subject to all matters of record.

Grantor and Grantee agree that the following terms and provisions are an integral part of this Deed and that this Deed is given and accepted, and the Property is conveyed, upon and subject to the following terms and provisions. Acceptance of this Deed by Grantee shall constitute the agreement by Grantee, for itself and its successors and assigns, to be bound by and to comply with the following reservations, covenants, conditions and restrictions, which shall constitute covenants and equitable servitudes running with the land and binding on subsequent owners of the Property (except that all of the following reservations, covenants, conditions and restrictions shall be null and void and of no further force or effect in the event that Grantor reacquires title to the Property at any time):

1. Limitation on Use of Property. Grantee acknowledges that Grantor is conveying the Property to Grantee solely for the purpose of constructing a cultural arts center thereon, consisting of the facilities identified on the approved Site Improvement Plan for the Lone Tree Cultural Arts Center (Site Improvement Plan SP09-09R) (the "SIP"), and Grantee covenants and agrees that the Property shall be used solely for such cultural arts center for a period of at least fifteen (15) years (the "Permitted Use"). The Property shall be owned by Grantee and managed by or under the direction of Grantee. The Grantee may contract for the independent management and operation of the Property and may sell, convey or transfer the Property, subject to a specific covenant incorporating the Permitted Use of the Property. The foregoing covenant is for the benefit of, and shall be enforceable by and at the discretion of Grantor or its successor-in-interest, and no other third party shall have any rights with respect thereto. Grantor agrees that in the event that the Property is sold or transferred by Grantee in violation of this Section 1, the Grantor shall receive payment of the Land Price as provided in Section 4 below. Following the fifteenth anniversary of the recording of this Deed, this covenant regarding the Permitted Use and the Limitation on Use of Property shall expire and shall be of no force and effect

2. Design Review. As provided in Section III(g) of the RidgeGate Planned Development District, LCS will be entitled to participate in all design reviews related to the facilities to be constructed on the Property to ensure that the quality of the project is consistent with the quality envisioned for RidgeGate, as reflected in City and project development standards.

3. Repurchase Option for Failure to Commence Construction. Grantor hereby reserves an option to repurchase the Property (the "Failure to Commence Construction Repurchase")

Option") in the event that construction of a cultural arts center in accordance with the SIP has not commenced on the Property within five (5) years after the date of recording of this Special Warranty Deed (the "Construction Deadline"): Grantor shall have the right to exercise the Failure to Commence Construction Repurchase Option by giving Grantee written notice of exercise within 180 days after the Construction Deadline. Within 60 days after Grantor gives notice of the exercise of the Failure to Commence Construction Repurchase Option, Grantee shall tender to Grantor Grantee's Special Warranty Deed for the Property in exchange for "good funds," as defined under Colorado law, from Grantor in the amount of Ten Dollars (\$10.00) (the "Failure to Commence Construction Repurchase Price"). Grantee shall deliver title to Grantor at the closing of the Failure to Commence Construction Repurchase Option in the same condition as when delivered by Grantor to Grantee by this Deed. Grantee agrees to pay all costs and expenses for such closing, including the premium for a standard title insurance policy, insuring that title to the Property is vested in Grantor. For purposes of this Section 3, construction shall be deemed to have commenced upon the pouring of the foundation for the community arts center.

4. Payment of Land Price to Grantor if Property is Sold or Transferred. Grantee acknowledges and agrees that Grantor is donating the Property to Grantee pursuant to this Deed on the condition that Grantee abides by the Permitted Use and the Limitation on Use of Property as stated in Section 1 of this Deed for a period of at least fifteen (15) years. Accordingly, in the event of any sale or other transfer of the Property in violation of Section 1 of this Deed to any third party on or before the fifteenth anniversary of the date of recording of this Deed, Grantee shall pay to Grantor in immediately available funds, on or before the date of any such sale or transfer (the "Due Date"), the sum of \$2,075,634, escalating from and after the date hereof at a rate of 3% per annum, compounded annually (with such annual escalations occurring on each anniversary of the date of recording of this Deed) (the "Land Price"). Grantor hereby reserves the right to place a lien on the Property in order to secure payment of the Land Price, plus interest thereon from and after the Due Date until paid in full at the rate of 12% per annum, and any costs incurred by Grantor in the collection thereof (including, without limitation, reasonable attorneys' fees) upon a conveyance in violation of Section 1 of this Deed before at least fifteen (15) years.

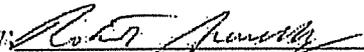
5. Reservation of Water and Mineral Rights. Grantor excepts from the Property hereby conveyed and reserves to itself and its successors and assigns (i) all rights, title and interest in and to all adjudicated and undecreed water, ditch, reservoir, well, spring, seepage and pond rights, and any other types of rights to the ownership and/or use of water, tributary, non-tributary and not non-tributary, appurtenant to, historically used in connection with, or otherwise in any way related to the Property, and (ii) all minerals, oil, gas, geothermal rights, gravel and other minerals lying in, on or under or appurtenant to the Property (collectively, the Reserved Rights"), provided that no extraction, use or enjoyment of such Reserved Rights shall impair any subjacent or lateral support for improvements on the Property.

6. Reservation of Easements. Grantor excepts from the Property hereby conveyed and reserves unto itself and its successors and assigns, (a) a perpetual, non-exclusive easement on, over, under, through and across all of the access and parking areas within the Property as shown in the SIP for (i) vehicular and pedestrian access to and from Lots 1B and 1C, RidgeGate –

Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado, and the construction and use of parking spaces in accordance with the provisions of the Shared Access and Parking Easement Agreement between Grantor and Grantee dated of even date herewith, and (ii) construction, installation, use, operation, maintenance, repair and replacement of utilities (including, without limitation, water, sewer, gas, electric, telephone, cable and fiber optic lines and related appurtenances), and (b) a perpetual, non-exclusive easement on, over, under, through and across the portion of the Property labeled as "30' Public Access and Utility Easement" on the final plat of RidgeGate - Section 15 Filing No. 5, 3<sup>rd</sup> Amendment for vehicular and pedestrian access to and from Lot 1D, RidgeGate-Section 15 Filing No. 5, 3<sup>rd</sup> Amendment.

SIGNED this 17<sup>th</sup> day of March, 2010.

LINCOLN COMMONS SOUTH, INC.,  
a Delaware corporation

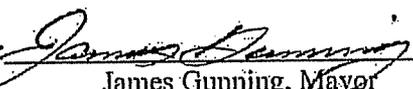
By:   
Robert Asselbergs, President

ACCEPTANCE

THE CITY OF LONE TREE, COLORADO hereby accepts the real property conveyed herein this 17<sup>th</sup> day of March, 2010.

CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By:   
James Gunning, Mayor

By:   
Neil Rutledge,  
Assistant City Attorney

Attest:

By:   
Jennifer Pettinger, CMC, City Clerk

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF QUEENS )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of March, 2010, by Robert Asselbergs, as President of Lincoln Commons South, Inc., a Delaware corporation.

Witness my hand and official seal.

(Notarial Seal)

LYNDA J. SHEA  
Notary Public, State of New York  
No. 01SH6088012  
Qualified in Queens County  
Commission Expires March 3, 2011

Lynda J. Shea  
Notary Public

My commission expires: 3/3/2011

**EXHIBIT C**

**EXEMPT FROM DOCUMENTARY FEE PER C.R.S. 39-13-104(1)(A)**

**AMENDMENT TO SPECIAL WARRANTY DEED**

This Amendment to Special Warranty Deed, except as otherwise noted, is subject to the provisions set forth in the Special Warranty Deed (the "Deed") from Lincoln Commons South, Inc. to Grantee recorded in the real property records of Douglas County, Colorado on March 18, 2010, at Reception No. 20100017118, attached hereto as **Attachment A**.

LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("Grantor") and the CITY OF LONE TREE, COLORADO, municipal corporation of the State of Colorado ("Grantee"), whose address is 9220 Kimmer Drive, Suite 100, Lone Tree, CO 80124, agree that the terms and provisions below are an integral part of this Amendment to the Deed. The Grantor and Grantee agree that the Reservation of Easements contained in Section 6 of the Deed is no longer applicable. Accordingly, by mutual agreement of Grantor and Grantee, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged:

**Section 6 of the Special Warranty Deed, recorded in the real property records of Douglas County, Colorado on March 18, 2010, at Reception No. 20100017118, is hereby struck from the Deed and is of no further force or effect.**

This Amendment to the Deed is given and accepted, upon and subject to the terms and provisions stated above and shall constitute covenants and equitable servitudes running with the land and binding on subsequent owners of the Property.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2014.

LINCOLN COMMONS SOUTH, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Robert Asselbergs, President



**EXHIBIT C  
ATTACHMENT A**

**[See attached]**

**EXEMPT FROM DOCUMENTARY FEE PER C.R.S. 39-13-104(1)(A)**

**SPECIAL WARRANTY DEED**

LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("Grantor") hereby sells and conveys to the CITY OF LONE TREE, COLORADO, municipal corporation of the State of Colorado ("Grantee"), whose address is 9220 Kimmer Drive, Suite 100, Lone Tree, CO 80124, Lot 1A, RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado (the "Property"), together with all its appurtenances, excepting the Reserved Rights (as defined below), and Grantor warrants the title to the same against all persons claiming by, through or under Grantor, subject to all matters of record.

Grantor and Grantee agree that the following terms and provisions are an integral part of this Deed and that this Deed is given and accepted, and the Property is conveyed, upon and subject to the following terms and provisions. Acceptance of this Deed by Grantee shall constitute the agreement by Grantee, for itself and its successors and assigns, to be bound by and to comply with the following reservations, covenants, conditions and restrictions, which shall constitute covenants and equitable servitudes running with the land and binding on subsequent owners of the Property (except that all of the following reservations, covenants, conditions and restrictions shall be null and void and of no further force or effect in the event that Grantor reacquires title to the Property at any time):

1. Limitation on Use of Property. Grantee acknowledges that Grantor is conveying the Property to Grantee solely for the purpose of constructing a cultural arts center thereon, consisting of the facilities identified on the approved Site Improvement Plan for the Lone Tree Cultural Arts Center (Site Improvement Plan SP09-09R) (the "SIP"), and Grantee covenants and agrees that the Property shall be used solely for such cultural arts center for a period of at least fifteen (15) years (the "Permitted Use"). The Property shall be owned by Grantee and managed by or under the direction of Grantee. The Grantee may contract for the independent management and operation of the Property and may sell, convey or transfer the Property, subject to a specific covenant incorporating the Permitted Use of the Property. The foregoing covenant is for the benefit of, and shall be enforceable by and at the discretion of Grantor or its successor-in-interest, and no other third party shall have any rights with respect thereto. Grantor agrees that in the event that the Property is sold or transferred by Grantee in violation of this Section 1, the Grantor shall receive payment of the Land Price as provided in Section 4 below. Following the fifteenth anniversary of the recording of this Deed, this covenant regarding the Permitted Use and the Limitation on Use of Property shall expire and shall be of no force and effect

2. Design Review. As provided in Section III(g) of the RidgeGate Planned Development District, LCS will be entitled to participate in all design reviews related to the facilities to be constructed on the Property to ensure that the quality of the project is consistent with the quality envisioned for RidgeGate, as reflected in City and project development standards.

3. Repurchase Option for Failure to Commence Construction. Grantor hereby reserves an option to repurchase the Property (the "Failure to Commence Construction Repurchase

Option") in the event that construction of a cultural arts center in accordance with the SIP has not commenced on the Property within five (5) years after the date of recording of this Special Warranty Deed (the "Construction Deadline"); Grantor shall have the right to exercise the Failure to Commence Construction Repurchase Option by giving Grantee written notice of exercise within 180 days after the Construction Deadline. Within 60 days after Grantor gives notice of the exercise of the Failure to Commence Construction Repurchase Option, Grantee shall tender to Grantor Grantee's Special Warranty Deed for the Property in exchange for "good funds," as defined under Colorado law, from Grantor in the amount of Ten Dollars (\$10.00) (the "Failure to Commence Construction Repurchase Price"). Grantee shall deliver title to Grantor at the closing of the Failure to Commence Construction Repurchase Option in the same condition as when delivered by Grantor to Grantee by this Deed. Grantee agrees to pay all costs and expenses for such closing, including the premium for a standard title insurance policy, insuring that title to the Property is vested in Grantor. For purposes of this Section 3, construction shall be deemed to have commenced upon the pouring of the foundation for the community arts center.

4. Payment of Land Price to Grantor if Property is Sold or Transferred. Grantee acknowledges and agrees that Grantor is donating the Property to Grantee pursuant to this Deed on the condition that Grantee abides by the Permitted Use and the Limitation on Use of Property as stated in Section 1 of this Deed for a period of at least fifteen (15) years. Accordingly, in the event of any sale or other transfer of the Property in violation of Section 1 of this Deed to any third party on or before the fifteenth anniversary of the date of recording of this Deed, Grantee shall pay to Grantor in immediately available funds, on or before the date of any such sale or transfer (the "Due Date"), the sum of \$2,075,634, escalating from and after the date hereof at a rate of 3% per annum, compounded annually (with such annual escalations occurring on each anniversary of the date of recording of this Deed) (the "Land Price"). Grantor hereby reserves the right to place a lien on the Property in order to secure payment of the Land Price, plus interest thereon from and after the Due Date until paid in full at the rate of 12% per annum, and any costs incurred by Grantor in the collection thereof (including, without limitation, reasonable attorneys' fees) upon a conveyance in violation of Section 1 of this Deed before at least fifteen (15) years.

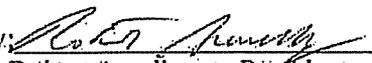
5. Reservation of Water and Mineral Rights. Grantor excepts from the Property hereby conveyed and reserves to itself and its successors and assigns (i) all rights, title and interest in and to all adjudicated and undecreed water, ditch, reservoir, well, spring, seepage and pond rights, and any other types of rights to the ownership and/or use of water, tributary, non-tributary and not non-tributary, appurtenant to, historically used in connection with, or otherwise in any way related to the Property, and (ii) all minerals, oil, gas, geothermal rights, gravel and other minerals lying in, on or under or appurtenant to the Property (collectively, the Reserved Rights"), provided that no extraction, use or enjoyment of such Reserved Rights shall impair any subjacent or lateral support for improvements on the Property.

6. Reservation of Easements. Grantor excepts from the Property hereby conveyed and reserves unto itself and its successors and assigns, (a) a perpetual, non-exclusive easement on, over, under, through and across all of the access and parking areas within the Property as shown in the SIP for (i) vehicular and pedestrian access to and from Lots 1B and 1C, RidgeGate –

Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado, and the construction and use of parking spaces in accordance with the provisions of the Shared Access and Parking Easement Agreement between Grantor and Grantee dated of even date herewith, and (ii) construction, installation, use, operation, maintenance, repair and replacement of utilities (including, without limitation, water, sewer, gas, electric, telephone, cable and fiber optic lines and related appurtenances), and (b) a perpetual, non-exclusive easement on, over, under, through and across the portion of the Property labeled as "30' Public Access and Utility Easement" on the final plat of RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment for vehicular and pedestrian access to and from Lot 1D, RidgeGate-Section 15 Filing No. 5, 3<sup>rd</sup> Amendment.

SIGNED this 17<sup>th</sup> day of March, 2010.

LINCOLN COMMONS SOUTH, INC.,  
a Delaware corporation

By:   
Robert Asselbergs, President.

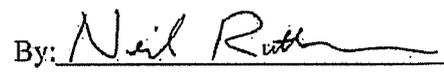
ACCEPTANCE

THE CITY OF LONE TREE, COLORADO hereby accepts the real property conveyed herein this 17<sup>th</sup> day of March, 2010.

CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By:   
James Gunning, Mayor

By:   
Neil Rutledge,  
Assistant City Attorney

Attest:

By:   
Jennifer Pettinger, CMC, City Clerk

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF QUEENS )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of March, 2010, by Robert Asselbergs, as President of Lincoln Commons South, Inc., a Delaware corporation.

Witness my hand and official seal.

(Notarial Seal)

LYNDA J. SHEA  
Notary Public, State of New York  
No. 01SH60880.12  
Qualified in Queens County  
Commission Expires March 3, 2011

*Lynda J. Shea*  
Notary Public

My commission expires: 3/3/2011

**EXHIBIT D**

**Shared Access and Parking Easement Agreement**

**[See attached]**

**SHARED ACCESS AND PARKING EASEMENT AGREEMENT**

THIS SHARED ACCESS AND PARKING EASEMENT AGREEMENT (this "Agreement") is entered into as of March 17, 2010, by and between LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("LCS") and the CITY OF LONE TREE, COLORADO, a Colorado municipal corporation ("City").

**Recitals**

A. Concurrently with the execution of this Agreement, LCS has conveyed to City Lot 1A, RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado ("Lot 1A"), and LCS is the owner of Lot 1B, Lot 1C, and Lot 1D RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado ("Lot 1B," "Lot 1C" and "Lot 1D" respectively). Lot 1A, Lot 1B and Lot 1C are sometimes referred to herein collectively as the "Lots" or individually, as a "Lot".

B. The owner from time to time of Lot 1A is referred to herein as "Lot 1A Owner," the owner from time to time of Lot 1B is referred to herein as "Lot 1B Owner" and the owner from time to time of Lot 1C is referred to herein as "Lot 1C Owner." Such parties are sometimes referred to herein collectively as the "Owners" or individually as an "Owner."

C. As a condition to the conveyance of Lot 1A by LCS to City, City agreed (i) to grant to LCS an easement on, over, across and through all of the parking areas and drive aisles to be constructed as provided below within Lot 1A (the "Easement Area") for access and parking for the benefit of each of Lot 1B and Lot 1C, and (ii) to construct, operate, maintain, repair and replace the Easement Area and the portion of the area labeled as "30' Public Access and Utilities Easement" on the final plat of RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado (the "30' Access Easement Area") located on Lot 1D, and improvements thereon, upon and subject to the terms and conditions set forth in this Agreement.

**Agreement**

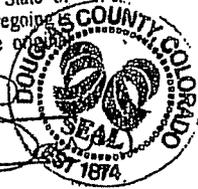
NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. **Grant of Easement.** City hereby grants to LCS a perpetual, non-exclusive easement on, over, across and through the Easement Area for pedestrian and vehicular access and parking of vehicles by Lot 1B Owner and Lot 1C Owner, their tenants and subtenants, and all of their respective agents, representatives, employees, contractors, licensees, invitees, customers and guests (collectively "Permittees"). All of the Owners and their respective Permittees shall have the right to use the parking spaces within the Easement Area on a "first come, first served" basis.

I, Jack Arrowsmith, County Clerk and Recorder  
in and for the County of Douglas, State of  
Colorado, do hereby certify that the foregoing  
is a full, true and correct copy of the original  
document recorded in my office

Date 3-18-10

By Jack Arrowsmith  
Deputy Clerk & Recorder



#1449901 v6 den

**2. Design and Construction of Improvements.**

(a) City shall, in connection with the construction of the cultural arts center on Lot 1A and at the City's sole cost and expense, design, construct and install all of the access and parking area improvements (including paving, curb and gutter, drainage facilities, lighting and landscaping) within Lot 1A substantially as shown in the Site Improvement Plan for the Lone Tree Cultural Arts Center (Site Improvement Plan SP09-09R) (the "SIP"), except for those areas labeled "Future Parking" on the SIP located to the north of Lot 1B (the "Lot 1B Future Parking Area") and to the south of Lot 1C (the "Lot 1C Future Parking Area"). The Lot 1B Future Parking Area and Lot 1C Future Parking Area are sometimes collectively referred to in this Agreement as the "Future Parking Areas." City shall, at City's sole cost and expense, install an irrigation system and lawn within the Future Parking Areas, which City shall maintain as irrigated turf until such time as the Future Parking Areas are developed as paved parking areas, as provided below. Lot 1A Owner shall not change the location or configuration of the parking spaces and drive aisles from that shown on the SIP without the prior written approval of all of the Owners.

(b) Lot 1B Owner shall, at Lot 1B Owner's sole cost and expense, have the right at any time (but not later than such time as a certificate of occupancy is issued for any building constructed on Lot 1B) to construct the access and parking improvements within the Lot 1B Future Parking Area, or so much thereof as is required to satisfy parking requirements applicable to the use being made of Lot 1B, substantially as shown in the SIP. City shall cooperate in connection with any modifications to the existing improvements and irrigation system as may be necessary to allow for construction of such improvements. Notwithstanding the shared use thereof allowed under this Agreement, all parking spaces located within the Lot 1B Future Parking Area shall be counted towards the parking requirements applicable to the use on Lot 1B.

(c) Lot 1C Owner shall, at Lot 1C Owner's sole cost and expense, have the right at any time (but not later than such time as a certificate of occupancy is issued for any building constructed on Lot 1C) to construct the access and parking improvements within the Lot 1C Future Parking Area, or so much thereof as is required to satisfy parking requirements applicable to the use being made of Lot 1C, substantially as shown in the SIP. City shall cooperate in connection with any modifications to the existing improvements and irrigation system as may be necessary to allow for construction of such improvements. Notwithstanding the shared use thereof allowed under this Agreement, all parking spaces located within the Lot 1C Future Parking Area shall be counted towards the parking requirements applicable to the use on Lot 1C.

**3. Operation, Maintenance, Repair and Replacement of Easement Area and Improvements.**

(a) Lot 1A Owner shall at all times operate and maintain the Easement Area and the portion of the 30' Access Easement Area located on Lot 1D, including the Future Parking Areas, and all paving, curb and gutter, lighting, landscaping and irrigation systems, and other improvements thereon (the "Improvements") in first-class order, condition and repair. The foregoing shall include, without limitation, snow removal, and lighting of the Easement Area during at least the hours of operation of each of the businesses on Lot 1B and Lot 1C. Upon

request by any Owner, Lot 1A Owner shall designate and reserve in total an amount of no more than 25 parking spaces ("Valet Parking Spaces") within the Easement Area, at a location or locations mutually acceptable to all the Owners, for use solely for valet parking by the Owners on a "first come, first served" basis (or upon such other terms and conditions as all of the Owners may agree in writing). Lot 1A Owner shall post the Valet Parking Spaces with signs stating that they are reserved for valet parking, and that violators will be towed at the violator's expense.

(b) Lot 1A Owner shall be solely responsible for all costs of operation, maintenance, repair and replacement of the Easement Area and Improvements (collectively, the "Easement Costs") during the period of time prior to the date on which a business is opened on either of Lot 1B or Lot 1C. Except as provided in subsections 3(c) and 3(h) below, (i) from and after the date on which a business is open to the public on Lot 1B, Lot 1B Owner shall reimburse Lot 1A Owner for a share of the Easement Costs equal to a fraction, the numerator of which is the number of parking spaces required by applicable zoning for the use on Lot 2 and the denominator of which is the total number of parking spaces located within the entire Easement Area; and (ii) from and after the date on which a business is open to the public on Lot 1C, Lot 1C Owner shall reimburse Lot 1A Owner for a share of the Easement Costs equal to a fraction, the numerator of which is the number of parking spaces required by applicable zoning for the use on Lot 1C and the denominator of which is the total number of parking spaces located within the entire Easement Area. Such reimbursement shall be due and payable within 30 days after receipt of request for reimbursement from Lot 1A Owner, accompanied by copies of invoices evidencing expenses incurred by Lot 1A Owner in connection therewith.

(c) If any Owner, or such Owner's Permittees, damages the Improvements or Easement Area, or causes any obstruction of the Easement Area, such Owner (the "Responsible Owner") shall promptly cause such damage to be repaired or obstruction to be removed at the Responsible Owner's sole cost and expense. If the Responsible Owner fails to promptly complete such repair or removal, then either of the other Owners (the "Performing Owner") shall have the right to cause such repair or removal to be performed and the Responsible Owner shall reimburse the Performing Owner for all costs reasonably incurred by the Performing Owner in connection therewith. Such reimbursement shall be due and payable within 30 days after receipt of request for reimbursement from the Performing Owner, accompanied by copies of invoices evidencing expenses incurred by the Performing Owner in connection therewith.

(d) If Lot 1 Owner fails to timely perform any of its obligations under this Section 3, either of the other Owners may cause to be performed such repair or maintenance work as such Owner reasonably deems necessary to maintain the Improvements and the Easement Area in a first class condition. Such Owner shall be entitled to reimbursement from the other Owners for their respective share of any costs incurred by such Owner in connection therewith (so that each Owner pays the share of such costs that each would be responsible for if such work had been performed by Lot 1A Owner as provided in subsection 3(b) above and 3(h) below), which reimbursement shall be due and payable within 30 days after receipt of a request for reimbursement, accompanied by copies of invoices evidencing such costs.

(e) All work in the Easement Area shall be performed in a good and workmanlike manner in compliance with all applicable laws, rules, regulations, ordinances and other

requirements of governmental authorities, and in a manner which will, to the extent reasonably practicable, minimize disturbance of the Easement Area and interference with the Owners' use of the Easement Area. All such work shall be diligently pursued to completion. Except in case of emergency, an Owner performing any such work shall give the other Owners reasonable advance notice thereof.

(f) The Owner completing the Improvements or performing any other work on the Easement Area shall pay for all labor and materials relating to or furnished in connection therewith and shall not cause or permit the Easement Area to be encumbered by any mechanics' or materialmen's liens relating thereto; and if any such lien claim is recorded, such Owner shall cause the same to be released of record, by bonding or any other means available, within thirty (30) days of its recordation.

(g) Any reimbursement amount not paid when due hereunder shall bear interest at the rate of ten (10) percent per annum from the date due until paid.

(h) Lot 1A Owner shall be solely responsible for all costs of operation, maintenance, repair and replacement of the 30' Access Easement Area and Improvements located thereon, without any reimbursement from any other parties. This obligation, and the obligation to maintain the 30' Access Easement Area as provided in subsection 3(a) above, shall run to the benefit of all of Lots 1B, 1C and 1D, and the owner from time to time of Lot 1D ("Lot 1D Owner") shall have all the rights of an Owner with respect thereto (including, without limitation, the rights of an Owner under subsection 3(d) above with respect to the 30' Access Easement Area).

**4. Reimbursement for Portion of Development Fee.**

(a) Not later than the date of issuance of a building permit for the construction of a building on Lot 1B, Lot 1B Owner shall reimburse City for a share of the 12,000 per acre development fee for Lot 1 paid by City to Rampart Range Metropolitan District No. 1 (the "Development Fee") equal to a fraction, the numerator of which is the square footage of the Lot 1B Future Parking Area, or portion thereof that Lot 1B Owner is obligated to construct as provided in Section 2(b) above, and the denominator of which is the square footage of Lot 1A.

(b) Not later than the date of issuance of a building permit for the construction of a building on Lot 1C, Lot 1C Owner shall reimburse City for a share of the Development Fee equal to a fraction, the numerator of which is the square footage of the Lot 1C Future Parking Area, or portion thereof that Lot 1C Owner is obligated to construct as provided in Section 2(c) above, and the denominator of which is the square footage of Lot 1A.

**5. Notices.** Any notice, request, demand, consent, approval or other communication required or permitted under the terms of this Agreement shall be in writing and shall be deemed given and received (i) when hand delivered to the intended recipient; (ii) three (3) days after the same is deposited in the United States mail, with adequate postage prepaid, and sent by certified mail, return receipt requested; (iii) one (1) business day after the same is deposited with an overnight courier service of national or international reputation having a delivery area

encompassing the address of the intended recipient; or (iv) if sent by facsimile to the applicable facsimile number set forth below, when delivery has been electronically confirmed by the recipient's facsimile machine, as evidenced by the written confirmation produced by the sender's facsimile machine. The applicable addresses and facsimile numbers for notice purposes are initially as follows:

to City (as Owner of Lot 1A):                      City of Lone Tree  
9220 Kimmer Drive, Suite 100  
Lone Tree, CO 80124  
Attention: Jack Hidahl, City Manager  
Facsimile: (303) 225-4949  
Telephone: (303) 708-1818

with a copy to:                                      White, Bear & Ankele, P.C.  
1805 Shea Center Dr., Suite 100  
Highlands Ranch, CO 80129  
Attention: Gary White  
Facsimile: (303) 858-1801  
Telephone:(303) 858-1800

to LCS (as Owner of Lot 1B, Lot 1C and Lot 1D):                      Lincoln Commons South, Inc.  
c/o Coventry Development Corporation  
1041 Third Avenue, Suite 200  
New York, NY 10065  
Attention: Robert Asselbergs  
Facsimile: (212) 752-5407  
Telephone: (212) 752-6164

with a copy to:                                      Holme Roberts & Owen  
1700 Lincoln Street, Suite 4100  
Denver, CO 80203  
Attention: Paul Timmins  
Facsimile: (303) 866-0200  
Telephone: (303) 866-0601

Any party may change its address and/or fax number for notices pursuant to a written notice which is given in accordance with the terms hereof. If any subsequent Owner fails to give notice of its address for notices in accordance with the foregoing, then any notice to such Owner may be delivered to such Owner's address stated in any recorded deed by which it took title to a Lot, or to the address listed in the Douglas County Assessor's records for delivery of real property tax statements for such Lot. Any notice may be given on behalf of either party by its legal counsel or other authorized representative. As used herein, the term "business day" shall mean any day other than a Saturday, a Sunday, or a legal holiday for which U.S. Mail service is not provided.

6. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

7. **No Partnership or Joint Venture.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

8. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. **Estoppel Certificates.** Each Owner (the "Issuing Owner") agrees, that upon written request from the other Owner (the "Requesting Owner"), to provide the Requesting Owner or its first mortgagee, potential mortgagee, or successor, within 15 business days following such request, an estoppel certificate stating to the best of the Issuing Owner's knowledge as of such date (a) whether the Issuing Owner knows of any default by the Requesting Owner of this Agreement, as it may be amended from time to time, and if there are known defaults, specifying the nature thereof in reasonable detail; (b) whether this Agreement has been supplemented, assigned, modified, or amended in any way, and if so, then stating the nature thereof in reasonable detail; and (c) whether this Agreement is in full force and effect. Failure of the Issuing Owner to provide the estoppel certificate within the time set forth above shall be deemed an acknowledgment by the Issuing Owner that (i) there is no default under this Agreement; (ii) there has been no amendment, modification, supplementation, or assignment of this Agreement; and (iii) this Agreement is in full force and effect.

10. **Covenants Run With the Land.** Each of the agreements, covenants, conditions, and provisions contained in this Agreement shall run with and be binding upon each of the Lots and the current and future Owners thereof; provided, however, that each Owner's obligations under this Agreement with respect to any Lot shall be limited to those obligations and liabilities arising or accruing under this Agreement during such Owner's ownership of such Lot.

11. **Remedies.** No breach of any of the provisions of this Agreement will entitle Lot 1 Owner to cancel, rescind or otherwise terminate the easements or any rights granted herein. Each Owner shall be entitled to all other remedies at law or in equity for any breach of this Agreement, including, without limitation, actions for specific performance, injunctive or mandamus relief. All rights and remedies of the Owners are cumulative and the exercise by an Owner of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies.

12. **Attorneys' Fees.** In any action brought to enforce any provision of this Agreement, or to obtain a declaration of the rights or responsibilities of any party hereunder, the

prevailing party shall be awarded all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such party in connection therewith.

13. **No Implied Waiver.** The failure or delay of any Owner to exercise any of its rights under this Agreement shall not constitute a waiver of any such rights. No Owner shall be deemed to have waived any right under this Agreement unless such waiver is made expressly and in writing, and no waiver made as to any instance or any particular right shall be deemed a waiver as to any other instance or any other right.

14. **Interpretation.** This Agreement shall be interpreted in accordance with its fair meaning and shall not be interpreted in favor of either party by reason of either party having drafted any particular provision. No inference in favor of or against either party shall be drawn from the fact that such party has drafted any portion of this Agreement. The parties have both participated substantially in the negotiation, drafting and revision of this Agreement with representation by counsel and such other advisers as they have deemed appropriate.

15. **Headings.** The section headings used in this Agreement are for convenience only and shall not be considered in construing the meaning of any provision of this Agreement.

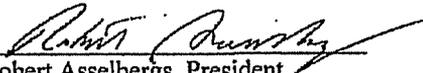
16. **No Third Party Beneficiaries.** No person or entity other than the Owners and Lot 1D Owner shall have any right, benefit or obligation under this Agreement as a third party beneficiary or otherwise. Without limiting the foregoing, nothing herein contained shall be deemed to be a gift or dedication of any portion of the Easement Area, Lots or any other property to the general public, it being the intention that the Easement and rights granted hereby shall be limited to and for the purposes herein specified.

17. **Recording.** This Agreement shall be recorded in the real property records of Douglas County, Colorado.

[signatures appear on following page]

EXECUTED as of the date first set forth above.

LINCOLN COMMONS SOUTH, INC.,  
a Delaware corporation

By:   
Robert Asselbergs, President

CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By:   
James Gunning, Mayor

By:   
Neil Rutledge,  
Assistant City Attorney

Attest:

By:   
Jennifer Pettinger, CMC, City Clerk

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF QUEENS )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of March, 2010, by Robert Asselbergs, as President of Lincoln Commons South, Inc., a Delaware corporation, on behalf of such corporation.

WITNESS my hand and official seal.

[SEAL] LYND A J. SHEA  
Notary Public, State of New York  
No. 01SH6088012  
Qualified In Queens County  
Commission Expires March 3, 2011

Lynda J. Shea  
Notary Public

My commission expires: 3/3/11

STATE OF Colorado )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of March, 2010, by James Gunning, as Mayor of the City of Lone Tree, Colorado, a Colorado municipal corporation.

WITNESS my hand and official seal.



James Gunning  
Notary Public

My commission expires: My Commission Expires October 1, 2010

**EXHIBIT E**

**Termination of Shared Access and Parking Easement Agreement**

LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("Grantor") and the CITY OF LONE TREE, COLORADO, municipal corporation of the State of Colorado ("Grantee"), whose address is 9220 Kimmer Drive, Suite 100, Lone Tree, CO 80124, agree that the Shared Access and Parking Easement Agreement recorded in the real property records of Douglas County, Colorado on March 18, 2010, at Reception No. 20100017119 is no longer applicable. Accordingly, by mutual agreement of Grantor and Grantee, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged:

**The Shared Access and Parking Easement Agreement recorded in the real property records of Douglas County, Colorado on March 18, 2010, at Reception No. 20100017119, is hereby terminated and is of no further force or effect.**

This Termination of Shared Access and Parking Easement Agreement is subject to the terms and provisions stated above and shall constitute covenants and equitable servitudes running with the land and binding on subsequent owners of the Property.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2014.

LINCOLN COMMONS SOUTH, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Robert Asselbergs, President

CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By: \_\_\_\_\_  
James D. Gunning, Mayor

By: \_\_\_\_\_  
Neil Rutledge,  
City Attorney



**EXHIBIT F**

**License Agreements for Lot 1B and Lot 1C**

**[See attached]**

**LICENSE AGREEMENT  
(Lot 1B)**

This License Agreement (this "Agreement"), dated as of March 17, 2010, is between LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("Owner") and the CITY OF LONE TREE, COLORADO, a Colorado municipal corporation ("Licensee").

Recitals

- A. LCS is the owner of Lot 1B, RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado (the "Property").
- B. Pursuant to the Memorandum of Understanding Regarding Cultural Arts Center Site between Owner and Licensee dated of even date herewith (the "MOU"), Owner and Licensee have agreed that Licensee shall install an irrigation system and lawn within the Property, and maintain the Property as irrigated turf until such time as the owner of the Property elects to prepare the Property for development.
- C. The Owner and Licensee acknowledge that this License Agreement satisfies the condition of Section 2(d) of the MOU.

Agreement

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Licensee agree as follows:

1. Grant of License. Owner hereby grants a license ("License") to Licensee to enter onto the Property at all times during the Term (as defined below) for the sole purpose of installing an irrigation system (the "Irrigation System") and lawn, and thereafter operating and maintaining such Irrigation System and lawn (including, without limitation, watering, mowing, aerating, weeding and fertilizing as needed), on the terms and conditions set forth in this Agreement.
2. Term. The term of this License ("Term") shall commence on the date hereof, and shall expire at such time as Owner notifies Licensee of Owner's election to prepare the Property for development.
3. Installation and Maintenance of Irrigated Turf. Licensee shall, at Licensee's sole cost and expense and at such time as Licensee constructs the cultural arts center on Licensee's adjacent property, install the Irrigation System and lawn on all of the Property, and at all times thereafter during the Term, maintain the same in a first class condition consistent with the manner in which the City maintains the Cultural Arts Center site.

4. Removal of Irrigation System. Licensee may, within 30 days after the expiration of the Term, remove the Irrigation System from the Property. If Licensee fails to remove the Irrigation System within such 30-day period, Owner shall have the right to have the Irrigation System removed, and may dispose of it in any manner Licensee deems appropriate, without any cost, obligation or liability to Licensee.

5. Condition of Property. Licensee accepts the Property in its current condition, AS IS, with all faults, latent or patent. Licensee acknowledges and agrees that Licensee has examined or has been afforded a reasonable opportunity to examine all matters concerning the Property that Licensee deems material to this License and Licensee's use of the Property, and Licensee is relying solely upon its own judgment and expertise as to such matters, the condition of the Property and its suitability for use. Owner has not made and does not hereby make any representations or warranties to Licensee that the Property is suitable or adequate in any respect for the activities or uses that Licensee intends to conduct or may conduct thereon.

6. Obligations of Licensee. Licensee shall promptly repair any damage to the Property that is caused by Licensee or Licensee's employees or agents.

7. Indemnity. To the extent permitted by law, Licensee shall indemnify, defend and hold Owner harmless from and against any and all claims, liabilities, losses, damages, actions, fines, penalties, costs and expenses of any kind or nature (including without limitation, reasonable attorneys' fees and disbursements), in any way arising out of or related to the use of the Property by Licensee or Licensee's employees, contractors or agents, and/or any breach by Licensee of the terms of this Agreement.

8. Insurance. Licensee shall, at Licensee's sole cost and expense, maintain a policy of insurance in form and amounts, and with an insurance company, reasonably acceptable to Owner insuring the liability of Licensee under this Agreement and naming Owner as an additional named insured. Licensee shall, prior to entering onto the Property, provide Owner with a certified copy of such policy or a certificate acceptable to Owner which names Owner as an additional named insured and provides that such policy cannot be canceled or amended without 30 days prior written notice to Owner. In addition, Licensee shall maintain any workers compensation insurance required to be carried by Licensee under applicable law, and shall provide evidence thereof satisfactory to Owner prior to entering onto the Property.

9. Mechanic's Liens. Licensee shall keep the Property free from all liens of all planners, engineers, surveyors, architects, contractors or other parties engaged by Licensee in connection with exercise by Licensee of its rights, and performance of its obligations, under this Agreement. If any such lien shall be filed, Licensee shall cause the lien to be released of record within thirty (30) days after it is filed by payment, posting of a statutory bond with the appropriate court, or otherwise. If a final judgment establishing the validity or existence of a lien for any amount is entered, Licensee shall pay and satisfy the same at once. Licensee shall indemnify, hold harmless and defend Owner against such liens, and shall pay and satisfy any adverse judgment that may be rendered before the enforcement thereof against Owner or the Property. If Licensee fails to pay any charge for which any such lien has been filed and the lien is not discharged of record as described above, Owner, at its option, may pay such charge and related costs and interest, or may obtain and post a statutory surety bond, and the amount paid by

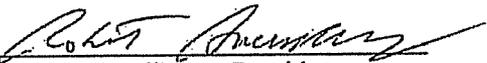
Owner, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Licensee to Owner. Any such amounts not paid when due shall accrue interest at the rate of 18% per annum from the date due until paid in full.

10. Enforcement. Each party shall be entitled to all remedies at law or in equity for the enforcement of this Agreement. In any action brought to enforce or contest any provision of this Agreement, or to obtain a declaration of the rights or obligations of any party hereunder, the prevailing party shall be entitled to recover all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such party in connection with such action.

11. Binding effect. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

OWNER:

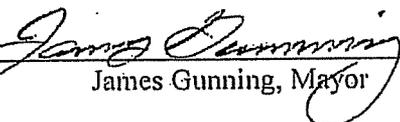
LINCOLN COMMONS SOUTH, INC.

By:   
Robert Asselbergs, President

LICENSEE:

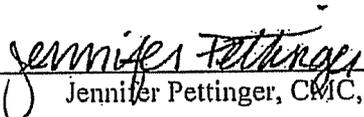
CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By:   
James Gunning, Mayor

By:   
Neil Rutledge,  
Assistant City Attorney

Attest:

By:   
Jennifer Pettinger, CMC, City Clerk

## LICENSE AGREEMENT

(Lot 1C)

This License Agreement (this "Agreement"), dated as of March 17, 2010, is between LINCOLN COMMONS SOUTH, INC., a Delaware corporation ("Owner") and the CITY OF LONE TREE, COLORADO, a Colorado municipal corporation ("Licensee").

### Recitals

A. LCS is the owner of Lot 1C, RidgeGate – Section 15 Filing No. 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado (the "Property").

B. Pursuant to the Memorandum of Understanding Regarding Cultural Arts Center Site between Owner and Licensee dated of even date herewith (the "MOU"), Owner and Licensee have agreed that Licensee shall install an irrigation system and lawn within the Property, and maintain the Property as irrigated turf until such time as the owner of the Property elects to prepare the Property for development.

C. The Owner and Licensee acknowledge that this License Agreement satisfies the condition of Section 2(d) of the MOU.

### Agreement

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Licensee agree as follows:

1. Grant of License. Owner hereby grants a license ("License") to Licensee to enter onto the Property at all times during the Term (as defined below) for the sole purpose of installing an irrigation system (the "Irrigation System") and lawn, and thereafter operating and maintaining such Irrigation System and lawn (including, without limitation, watering, mowing, aerating, weeding and fertilizing as needed), on the terms and conditions set forth in this Agreement.

2. Term. The term of this License ("Term") shall commence on the date hereof, and shall expire at such time as Owner notifies Licensee of Owner's election to prepare the Property for development.

3. Installation and Maintenance of Irrigated Turf. Licensee shall, at Licensee's sole cost and expense and at such time as Licensee constructs the cultural arts center on Licensee's adjacent property, install the Irrigation System and lawn on all of the Property, and at all times thereafter during the Term, maintain the same in a first class condition consistent with the manner in which the City maintains the Cultural Arts Center site.

4. Removal of Irrigation System. Licensee may, within 30 days after the expiration of the Term, remove the Irrigation System from the Property. If Licensee fails to remove the Irrigation System within such 30-day period, Owner shall have the right to have the Irrigation System removed, and may dispose of it in any manner Licensee deems appropriate, without any cost, obligation or liability to Licensee.

5. Condition of Property. Licensee accepts the Property in its current condition, AS IS, with all faults, latent or patent. Licensee acknowledges and agrees that Licensee has examined or has been afforded a reasonable opportunity to examine all matters concerning the Property that Licensee deems material to this License and Licensee's use of the Property, and Licensee is relying solely upon its own judgment and expertise as to such matters, the condition of the Property and its suitability for use. Owner has not made and does not hereby make any representations or warranties to Licensee that the Property is suitable or adequate in any respect for the activities or uses that Licensee intends to conduct or may conduct thereon.

6. Obligations of Licensee. Licensee shall promptly repair any damage to the Property that is caused by Licensee or Licensee's employees or agents.

7. Indemnity. To the extent permitted by law, Licensee shall indemnify, defend and hold Owner harmless from and against any and all claims, liabilities, losses, damages, actions, fines, penalties, costs and expenses of any kind or nature (including without limitation, reasonable attorneys' fees and disbursements), in any way arising out of or related to the use of the Property by Licensee or Licensee's employees, contractors or agents, and/or any breach by Licensee of the terms of this Agreement.

8. Insurance. Licensee shall, at Licensee's sole cost and expense, maintain a policy of insurance in form and amounts, and with an insurance company, reasonably acceptable to Owner insuring the liability of Licensee under this Agreement and naming Owner as an additional named insured. Licensee shall, prior to entering onto the Property, provide Owner with a certified copy of such policy or a certificate acceptable to Owner which names Owner as an additional named insured and provides that such policy cannot be canceled or amended without 30 days prior written notice to Owner. In addition, Licensee shall maintain any workers compensation insurance required to be carried by Licensee under applicable law, and shall provide evidence thereof satisfactory to Owner prior to entering onto the Property.

9. Mechanic's Liens. Licensee shall keep the Property free from all liens of all planners, engineers, surveyors, architects, contractors or other parties engaged by Licensee in connection with exercise by Licensee of its rights, and performance of its obligations, under this Agreement. If any such lien shall be filed, Licensee shall cause the lien to be released of record within thirty (30) days after it is filed by payment, posting of a statutory bond with the appropriate court, or otherwise. If a final judgment establishing the validity or existence of a lien for any amount is entered, Licensee shall pay and satisfy the same at once. Licensee shall indemnify, hold harmless and defend Owner against such liens, and shall pay and satisfy any adverse judgment that may be rendered before the enforcement thereof against Owner or the Property. If Licensee fails to pay any charge for which any such lien has been filed and the lien is not discharged of record as described above, Owner, at its option, may pay such charge and related costs and interest, or may obtain and post a statutory surety bond, and the amount paid by

Owner, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Licensee to Owner. Any such amounts not paid when due shall accrue interest at the rate of 18% per annum from the date due until paid in full.

10. Enforcement. Each party shall be entitled to all remedies at law or in equity for the enforcement of this Agreement. In any action brought to enforce or contest any provision of this Agreement, or to obtain a declaration of the rights or obligations of any party hereunder, the prevailing party shall be entitled to recover all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such party in connection with such action.

11. Binding effect. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

OWNER:

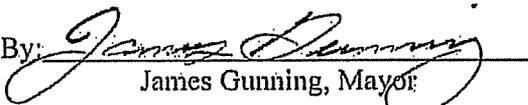
LINCOLN COMMONS SOUTH, INC.

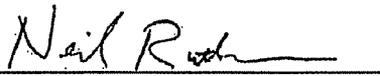
By:   
Robert Asselbergs, President

LICENSEE:

CITY OF LONE TREE, COLORADO  
a Colorado municipal corporation

Approved as to form:

By:   
James Gunning, Mayor

By:   
Neil Rutledge,  
Assistant City Attorney

Attest:

By:   
Jennifer Pettinger, CMC, City Clerk

**EXHIBIT G**

**EXEMPT FROM DOCUMENTARY FEE PER C.R.S. 39-13-104(1)(A)**

**SPECIAL WARRANTY DEED**

LINCOLN COMMONS SOUTH, INC., a Delaware corporation (“Grantor”) hereby sells and conveys to the CITY OF LONE TREE, COLORADO, municipal corporation of the State of Colorado (“Grantee”), whose address is 9220 Kimmer Drive, Suite 100, Lone Tree, CO 80124, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged:

**1) Lot 1B, RidgeGate – Section 15, Filing 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado; and**

**2) Lot 1C, RidgeGate – Section 15, Filing 5, 3<sup>rd</sup> Amendment, City of Lone Tree, County of Douglas, State of Colorado (together, the “Property”),**

**together with all appurtenances, excepting the Reserved Rights (as defined below), and Grantor warrants the title to the same against all persons claiming by, through or under Grantor, subject to all matters of record.**

Grantor and Grantee agree that the following terms and provisions are an integral part of this Deed and that this Deed is given and accepted, and the Property is conveyed, upon and subject to the following terms and provisions. Acceptance of this Deed by Grantee shall constitute the agreement by Grantee, for itself and its successors and assigns, to be bound by and to comply with the following reservations, covenants, conditions and restrictions, which shall constitute covenants and equitable servitudes running with the land and binding on subsequent owners of the Property:

1. Design Review. Grantee acknowledges and agrees that no improvements shall be constructed within the Property unless and until the same have been approved by the RidgeGate Design Review Committee.

2. Reservation of Water and Mineral Rights. Grantor excepts from the Property hereby conveyed and reserves to itself and its successors and assigns (i) all rights, title and interest in and to all adjudicated and undecreed water, ditch, reservoir, well, spring, seepage and pond rights, and any other types of rights to the ownership and/or use of water, tributary, non-tributary and not non-tributary, appurtenant to, historically used in connection with, or otherwise in any way related to the Property, and (ii) all minerals, oil, gas, geothermal rights, gravel and other minerals lying in, on or under or appurtenant to the Property (collectively, the Reserved Rights”), provided that no extraction, use or enjoyment of such Reserved Rights shall impair any subjacent or lateral support for improvements on the Property.

EXECUTED as of \_\_\_\_\_, 2014.





CITY OF LONE TREE  
STAFF REPORT

**TO: Mayor Gunning and City Council**

**FROM: Kristin Baumgartner, Finance Director**

**DATE: December 9, 2014**

**FOR: December 16, 2014, City Council Meeting**

**SUBJECT: Resolution, 14-23, ADOPTING THE 2015 GENERAL FUND,  
DEBT SERVICE FUNDS AND SPECIAL REVENUE FUNDS  
BUDGETS**

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Summary

Attached is the 2015 City budget presented for adoption. Prior to finalizing the budget, staff reviewed 2014 current projects and rolled over amounts appropriate for projects carrying over to 2015. Revenues were also adjusted where appropriate based on actual information through October 31, 2014. No other significant changes were made to the budget draft from the prior version presented at the public hearing.

Cost

N/A

Suggested Motion or Recommended Action

Move to approve Resolution 14-23, Adopting the 2015 General Fund, Debt Service Funds and Special Revenue Funds Budgets.

**CERTIFIED RECORD**  
**OF**  
**PROCEEDINGS RELATING TO**  
**CITY OF LONE TREE**  
**DOUGLAS COUNTY, COLORADO**  
**AND THE BUDGET HEARING**  
**FOR FISCAL YEAR**  
**2015**

STATE OF COLORADO )  
 )  
COUNTY OF DOUGLAS )ss.  
 )  
CITY OF LONE TREE )

The City Council of the City of Lone Tree, Douglas County, Colorado, held a meeting at 8527 Lone Tree Parkway, Lone Tree, Colorado, on December 16, 2014 at 7:00 p.m.

The following members of the City Council were present:

James Gunning, Mayor  
Jackie Millet, Mayor Pro Tem  
Harold Anderson, Council Member  
Kim Monson, Council Member  
Susan Squyer, Council Member

Also in attendance were:

Seth Hoffman, City Manager  
Neil Rutledge, City Attorney  
Kristin Baumgartner, CPA, Finance Director  
Jennifer Pettinger, CMC, City Clerk

Mayor Gunning stated that proper publication was made to conduct a public hearing on the 2015 budget for the City of Lone Tree on November 18, 2014. Mayor Gunning opened the public hearing on the proposed 2015 budget for the City of Lone Tree. There was no public comment on the proposed budget for the City of Lone Tree, the public hearing was closed. Final adoption of the budget occurred at the regularly scheduled Council meeting on December 16, 2014 at 7:00 p.m.

Thereupon, \_\_\_\_\_ introduced and moved the adoption of the following Resolution:

**CITY OF LONE TREE  
RESOLUTION NO. 14-23**

A RESOLUTION SUMMARIZING REVENUES AND EXPENDITURE FOR THE GENERAL FUND, SPECIAL REVENUE FUND/RIDGEGATE, SPECIAL REVENUE FUND/CULTURAL AND COMMUNITY SERVICES, DEBT SERVICE FUND/ARTS AND CULTURAL FACILITIES, AND DEBT SERVICE FUND/PARK AND RECREATION IMPROVEMENTS, ADOPTING A BUDGET, AND APPROPRIATING SUMS OF MONEY TO THE GENERAL FUND, SPECIAL REVENUE FUND/RIDGEGATE, SPECIAL REVENUE FUND/CULTURAL AND COMMUNITY SERVICES, DEBT SERVICE FUND/ARTS AND CULTURAL FACILITIES, AND DEBT SERVICE FUND/PARK AND RECREATION IMPROVEMENTS IN THE AMOUNT AND FOR THE PURPOSES SET FORTH HEREIN FOR THE CITY OF LONE TREE, DOUGLAS COUNTY, COLORADO, FOR THE 2015 FISCAL YEAR ENDING ON THE LAST DAY OF DECEMBER, 2015.

WHEREAS, the City Council of the City of Lone Tree has authorized its City Treasurer to prepare and submit a proposed budget to said governing body at the proper time; and

WHEREAS, the proposed budget has been submitted to the City Council for its consideration; and

WHEREAS, pursuant to Colorado statute, upon due and proper notice published on October 23, 2014 in the Douglas County News Press (legal notice #926274), a newspaper having general circulation within the boundaries of the City of Lone Tree, said proposed budget was available for inspection by the public at the Lone Tree Administrative Office and the City's website, a public hearing was held on November 18, 2014, and interested electors were given the opportunity to file or register any objections to said proposed budget; and

WHEREAS, whatever increases may have been made in the expenditures were added to the revenues so that the budget remains in balance, as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LONE TREE, DOUGLAS COUNTY, COLORADO:

Section 1. 2015 Budget Revenues. That the estimated revenues for the General Fund, Special Revenue Fund/RidgeGate, Special Revenue Fund/Cultural and Community Services, Debt Service Fund/Arts and Cultural Facilities, Debt Service Fund/Park and Recreation Improvements as more specifically set out in the budget attached hereto are accepted and approved.

Section 2. 2015 Budget Expenditures. That the estimated expenditures for the General Fund, Special Revenue Fund/RidgeGate, Special Revenue Fund/Cultural and Community Services, Debt Service Fund/Arts and Cultural Facilities and Debt Service Fund/Park and

Recreation Improvements as more specifically set out in the budget attached hereto are accepted and approved.

Section 3. Adoption of Budget for 2015. That the budget as submitted and attached hereto and incorporated herein by this reference, and if amended, then as amended, is hereby approved and adopted as the budget of the City of Lone Tree for calendar year 2015.

Section 4. Levy of General Property Taxes. No mill levy will be certified by the City of Lone Tree for collection in 2015 and the attached budget does not anticipate general property tax revenues to balance the budget.

Section 5. Amendment One Limits. That, to the best of its knowledge and information, the Council states that the foregoing budget does not result in a violation of any provision of Article X, Section 20, of the Colorado Constitution.

Section 6. Appropriations. That the amount of \$45,285,104 set forth as total expenditures in the budget attached hereto is hereby appropriated as follows from the General Fund, \$35,169,234, the Special Revenue Fund/RidgeGate, \$4,619,204 the Special Revenue Fund/Cultural and Community Services, \$2,864,166 the Debt Service Fund/Arts and Cultural Facilities, \$1,587,500 and the Debt Service Fund/Park and Recreation Improvements, \$1,045,000 for the budgeted expenditures.

The foregoing Resolution was seconded by \_\_\_\_\_.

APPROVED AND ADOPTED this 16<sup>th</sup> day of December, 2014

\_\_\_\_\_  
James D. Gunning, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

STATE OF COLORADO )  
 )  
COUNTY OF DOUGLAS )ss.  
 )  
CITY OF LONE TREE )

I, Jennifer Pettinger, City Clerk of the City of Lone Tree, Douglas County, Colorado, do hereby certify that the foregoing pages numbered 1 to 4, inclusive, constitute a true and correct copy of the record of proceedings of the City Council of the City of Lone Tree, adopted at a meeting of the Council held on December 16, 2014, at 7:00 p.m., at 8527 Lone Tree Parkway, Lone Tree, Colorado, as recorded in the official record of the proceedings of the City of Lone Tree, insofar as said proceedings relate to the budget hearing for fiscal year 2015; that said proceedings were duly had and taken; that the meeting was duly held; and that the persons were present at the meeting as therein shown. Further, I hereby certify that the attached budget is a true and accurate copy of the 2015 budget of the City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of the City of Lone Tree this 16<sup>th</sup> day of December, 2014.

( S E A L )

\_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

**CITY OF LONE TREE**  
**SUMMARY**  
**FORECASTED 2015 BUDGET AS ADOPTED**  
**WITH 2013 ACTUALS AND 2014 ESTIMATED**

	2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
<b>BEGINNING FUND BALANCES</b>	\$ 13,701,060	\$ 15,797,988	\$ 18,940,829
<b>REVENUE</b>			
TAXES	25,333,948	26,150,000	26,449,900
FRANCHISE FEES	973,986	1,038,000	1,059,200
INTERGOVERNMENTAL	7,317,985	5,523,887	8,310,712
LICENSES, FEES AND CHARGES	1,743,385	1,911,000	1,286,500
FINES AND FORFEITURES	648,298	519,000	626,300
ARTS CENTER	1,369,871	1,649,128	1,834,730
OTHER	1,760,167	551,139	1,411,086
Total revenue	39,147,640	37,342,154	40,978,428
<b>TRANSFERS IN</b>			
General Fund	1,024,170	999,758	632,823
Special Revenue Fund - RidgeGate	-	-	-
Special Revenue Fund - Arts Center	717,851	924,496	1,029,436
Total transfers in	1,742,021	1,924,254	1,662,259
Total funds available	54,590,721	55,064,396	61,581,516
<b>EXPENDITURES</b>			
GENERAL GOVERNMENT	4,775,878	4,931,773	5,173,452
MUNICIPAL COURT	210,388	213,170	229,966
COMMUNITY DEVELOPMENT	1,222,385	1,047,360	913,242
POLICE DEPARTMENT	6,142,980	6,786,230	7,391,721
PUBLIC WORKS	3,962,754	4,386,750	4,430,000
ARTS AND CULTURAL	2,143,423	2,871,124	3,022,666
PARKS AND RECREATION	18,034	5,000	165,000
CAPITAL OUTLAY	16,206,114	11,523,087	19,791,798
DEBT SERVICE	2,368,756	2,434,819	2,505,000
Total expenditures	37,050,712	34,199,314	43,622,845
<b>TRANSFERS OUT</b>			
General Fund	717,851	924,496	1,029,436
Special Revenue Fund - RidgeGate	887,569	824,758	505,323
Debt Service Fund - Arts and Cultural Facilities	136,601	175,000	127,500
Total transfers out	1,742,021	1,924,254	1,662,259
Total appropriation	38,792,733	36,123,568	45,285,104
<b>ENDING FUND BALANCES</b>	\$ 15,797,988	\$ 18,940,829	\$ 16,296,413

**CITY OF LONE TREE**  
**SUMMARY**  
**FORECASTED 2015 BUDGET AS ADOPTED**  
**WITH 2013 ACTUALS AND 2014 ESTIMATED**

2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
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**FUNDS RESERVED FOR:**

Emergency reserves (TABOR)	795,975	793,000	835,000
Emergency maintenance and repair	52,601	52,601	52,601
Prepaid items	295,760	300,000	300,000
Emergency disaster management	89,730	99,273	108,077
Capital projects - County - transportation	414,198	-	-
Bond proceeds - Park and Rec Improvements	934,020	934,020	794,020
Park fee in lieu of land	46,125	74,194	74,194
Conservation Trust Fund	115,118	177,118	240,118
Brick fence replacement reserve	986,200	986,200	986,200
Lone Tree Link Partnership funds	-	283,305	-
Kaiser Walk/Wheel grant	-	-	-
Debt Service - Arts and Cultural Facilities	568,947	649,141	766,141
Debt Service - Park and Recreation Improvements	682,980	776,367	868,767

**FUNDS DESIGNATED FOR:**

Working reserve	2,805,000	3,848,000	4,577,000
Capital reserve - capital projects	4,412,000	7,600,000	6,535,000
Capital reserve - vehicles replacement	-	92,000	133,333
Subsequent year's expenditures	2,561,001	2,252,417	-

**UNDESIGNATED AND UNRESERVED FUNDS**

	1,038,333	23,193	25,962
\$	15,797,988	\$ 18,940,829	\$ 16,296,413

**CITY OF LONE TREE  
GENERAL FUND  
FORECASTED 2015 BUDGET AS ADOPTED  
WITH 2013 ACTUALS AND 2014 ESTIMATED**

REVENUE DETAIL

	2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
<b>BEGINNING FUND BALANCE</b>	\$ 12,927,111	\$ 14,447,335	\$ 17,462,720
<b>REVENUE</b>			
<b>TAXES</b>			
Sales tax	17,533,355	18,130,000	18,577,000
Use tax-retail	282,421	270,000	275,400
Use tax - building materials	143,259	191,000	195,000
Lodging tax	616,644	720,000	734,000
Admissions tax	357,294	514,000	374,000
<b>TOTAL TAXES</b>	<b>18,932,973</b>	<b>19,825,000</b>	<b>20,155,400</b>
<b>FRANCHISE FEES</b>			
Electric and gas	674,777	710,000	725,000
Cable TV	184,726	199,000	202,000
<b>TOTAL FRANCHISE FEES</b>	<b>859,503</b>	<b>909,000</b>	<b>927,000</b>
<b>INTERGOVERNMENTAL</b>			
Highway Users Tax (HUTF)	229,850	222,137	206,106
Conservation Trust Fund (Lottery)	62,006	62,000	63,000
Cigarette tax	202,452	193,000	193,000
County Road & Bridge shareback	978,642	1,085,000	1,169,460
Douglas County Shareback - transportation	2,274,156	2,400,000	2,435,000
Motor vehicle registration fees	39,404	44,000	45,000
Regional improvements contribution - RRMDs	91,518	104,400	126,258
Reimbursable costs	3,332,376	1,127,400	3,863,600
Grants	23,128	118,000	18,000
<b>TOTAL INTERGOVERNMENTAL</b>	<b>7,233,532</b>	<b>5,355,937</b>	<b>8,119,424</b>

**CITY OF LONE TREE**  
**GENERAL FUND**  
**FORECASTED 2015 BUDGET AS ADOPTED**  
**WITH 2013 ACTUALS AND 2014 ESTIMATED**

REVENUE DETAIL - Continued

2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
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**REVENUE (Continued)**

**LICENSES, FEES AND CHARGES**

Sales and use tax and business license fees	22,645	23,500	23,500
Liquor license fees	22,100	12,000	13,000
Building permit fees	291,228	315,000	322,000
Planning and zoning fees	17,580	22,000	25,000
Engineering fees	64,305	33,000	35,000
Other	39,300	37,000	38,000
<b>TOTAL LICENSE, FEES AND CHARGES</b>	<b>457,158</b>	<b>442,500</b>	<b>456,500</b>

**FINES AND FORFEITURES**

Court fees	70,038	72,000	73,400
Vehicle and other code violation fines	534,619	402,000	507,000
Victims assistance surcharge	43,641	45,000	45,900
<b>TOTAL FINES AND FORFEITURES</b>	<b>648,298</b>	<b>519,000</b>	<b>626,300</b>

**OTHER**

Net investment income	16,744	11,150	13,970
Miscellaneous	1,443,809	247,000	1,141,000
Police Department fees and other charges	22,958	30,000	25,000
Tenant rental income	249,904	223,000	218,000
<b>OTHER</b>	<b>1,733,415</b>	<b>511,150</b>	<b>1,397,970</b>

Total revenue	<b>29,864,879</b>	<b>27,562,587</b>	<b>31,682,594</b>
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**TRANSFERS IN**

Special Revenue Fund - RidgeGate	887,569	824,758	505,323
Debt Service Fund - Arts and Cultural Facilities	136,601	175,000	127,500
<b>Total transfers in</b>	<b>1,024,170</b>	<b>999,758</b>	<b>632,823</b>

Total funds available	<b>\$ 43,816,160</b>	<b>\$ 43,009,680</b>	<b>\$ 49,778,137</b>
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**CITY OF LONE TREE  
GENERAL FUND  
FORECASTED 2015 BUDGET AS ADOPTED  
WITH 2013 ACTUALS AND 2014 ESTIMATED**

EXPENDITURE DETAIL

2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
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**EXPENDITURES**

**GENERAL GOVERNMENT**

City Council expenditures	\$ 27,482	\$ 33,000	\$ 48,000
City Council stipend	56,757	59,500	61,300
Administrative Services - salaries and benefits	582,688	544,359	568,081
City Clerk	15,056	29,575	40,000
Human Resources	50,241	88,300	81,270
Information Technology	265,757	382,155	403,950
Municipal office building	344,971	328,900	409,050
Civic Center maintenance & utilities	56,105	56,300	74,700
LTAC maintenance & utilities	205,537	199,360	301,910
Restroom maintenance	5,433	7,000	8,500
Fountain maintenance	-	-	23,500
Insurance	343,212	305,000	320,250
Finance - salaries and benefits	285,989	360,999	372,510
Finance - consulting	256,287	12,000	-
Audit	13,658	27,935	25,000
City Manager's Office - salaries and benefits	571,658	712,924	631,317
Dues and memberships	84,038	99,666	99,811
Legal - general	539,313	633,700	480,000
Legal - special	216,623	20,000	100,000
Consulting	23,238	20,000	80,000
Community support	46,808	51,200	53,000
Community garden	-	-	3,000
Youth initiatives	19,800	19,800	19,800
Housing Partnership	35,000	35,000	35,000
Community education programs	694	1,025	1,000
Citizen survey	-	-	27,800
Communications and newsletter	61,810	65,000	68,000
Economic development	144,952	268,500	276,000
Miscellaneous	13,641	48,801	52,251
<b>TOTAL GENERAL GOVERNMENT</b>	<b>4,266,750</b>	<b>4,410,000</b>	<b>4,665,000</b>

**CITY OF LONE TREE**  
**GENERAL FUND**  
**FORECASTED 2015 BUDGET AS ADOPTED**  
**WITH 2013 ACTUALS AND 2014 ESTIMATED**

EXPENDITURE DETAIL - Continued

2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
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**EXPENDITURES (Continued)**

**MUNICIPAL COURT**

Municipal Judge	23,986	23,000	30,000
Legal	36,000	36,000	36,000
Administration	133,677	136,170	140,966
Office supplies and software	3,932	3,000	3,000
Victims assistance	12,792	15,000	20,000
<b>TOTAL MUNICIPAL COURT</b>	<b>210,388</b>	<b>213,170</b>	<b>229,966</b>

**COMMUNITY DEVELOPMENT**

Salaries and benefits	572,445	476,642	545,440
Contract services	-	3,878	1,500
Field supplies	3,228	4,200	3,625
Planning Commission	1,799	2,500	2,500
Document scanning	6,735	6,500	6,500
Plan review and other inspections	32,359	25,000	25,000
Elevator inspections	17,982	41,960	43,560
Engineering	56,480	28,000	30,000
Sustainability program	362	500	3,000
ROW mowing	-	-	7,100
Miscellaneous	7,563	10,356	12,048
<b>TOTAL COMMUNITY DEVELOPMENT</b>	<b>698,952</b>	<b>599,536</b>	<b>680,273</b>

**POLICE DEPARTMENT**

Salaries and benefits	3,848,765	4,159,498	4,341,307
Office and administration	175,052	136,676	144,627
Uniforms and equipment	38,115	47,852	48,972
Vehicles and equipment	379,700	447,324	410,824
General equipment	12,740	20,669	103,702
Dispatch	366,154	389,268	422,590
Training	76,177	86,897	97,553
Community outreach and miscellaneous	91,314	75,316	99,484
<b>TOTAL POLICE DEPARTMENT</b>	<b>4,988,017</b>	<b>5,363,501</b>	<b>5,669,059</b>

**CITY OF LONE TREE**  
**GENERAL FUND**  
**FORECASTED 2015 BUDGET AS ADOPTED**  
**WITH 2013 ACTUALS AND 2014 ESTIMATED**

EXPENDITURE DETAIL - Continued

2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
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**EXPENDITURES (Continued)**

**PUBLIC WORKS**

Public Works Department	485,760	520,000	520,000
Street lighting	380,078	385,000	390,000
Street maintenance	565,269	650,000	650,000
Drainage maintenance	5,414	90,000	60,000
Street & sidewalk sweeping	35,702	50,000	50,000
Traffic signal energy cost and maintenance	123,382	130,000	135,000
Signal timing	-	-	19,000
Snow removal	968,042	1,044,500	832,000
Landscaping maintenance	137,807	83,000	50,000
Trash and recycling service	533,938	510,000	512,000
Household hazardous waste program	3,067	6,000	6,500
Engineering	237,440	240,000	275,000
Fence maintenance	7	-	80,000
Geographic Information System (GIS)	142,785	140,000	140,000
Website mapper	5,000	5,000	-
Materials and equipment	355	14,000	14,000
EPA Phase 2 Drainage	54,260	65,000	110,000
Noxious weeds control	9,733	22,000	20,000
Signage and striping	52,383	130,000	120,000
Accident repairs	35,917	20,000	20,000
Public Works Facility operations and equipment	26,216	45,000	45,000
Software and support	11,954	16,000	17,000
Street amenities	1,587	5,000	5,000
Mutt mitts contract	10,727	10,500	10,500
Habitat control	-	-	-
Holiday lighting and decorations	17,473	20,000	20,000
Miscellaneous	-	3,000	3,000
<b>TOTAL PUBLIC WORKS</b>	<b>3,844,296</b>	<b>4,204,000</b>	<b>4,104,000</b>

**ARTS AND CULTURAL**

Arts Center repairs and maintenance	-	122,500	106,000
Arts Center capital improvements	55,701	175,000	52,500
<b>TOTAL ARTS AND CULTURAL</b>	<b>55,701</b>	<b>297,500</b>	<b>158,500</b>

**PARKS AND RECREATION**

Recreational activities and support	10,696	-	-
Joint recreational projects with South Suburban	7,337	5,000	65,000
Park and recreation capital improvements	-	-	100,000
<b>TOTAL PARKS AND RECREATION</b>	<b>18,034</b>	<b>5,000</b>	<b>165,000</b>

**CITY OF LONE TREE  
GENERAL FUND  
FORECASTED 2015 BUDGET AS ADOPTED  
WITH 2013 ACTUALS AND 2014 ESTIMATED**

EXPENDITURE DETAIL - Continued

2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
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**EXPENDITURES (Continued)**

**CAPITAL OUTLAY**

Software packages	59,824	76,610	15,000
CarteGraph/ArcServer Upgrade	-	-	50,000
Website redesign	-	-	100,000
Overlay/reconstruction projects	1,555,338	1,215,000	1,200,000
Traffic signalization	65,210	70,000	145,000
Traffic and other improvements - joint projects	4,140	-	-
Pedestrian lights	234,468	206,000	-
Monumentation and signage	7,302	80,000	250,000
City Office building	1,535,258	19,000	25,500
City Office building - capital leases	951,972	1,015,000	1,290,000
City Office - letter of credit fees/remarketing fees	48,428	31,000	-
Civic Center capital improvements	59,153	69,000	25,000
Concrete panel replacement	344,808	472,000	250,000
Entertainment District improvements	103,674	20,000	730,000
Park Meadows Dr. traffic improvements	81,112	-	-
Park Meadows Drive median improvements	3,459	4,000	-
Park Meadows Dr. regional pond upgrade	-	-	-
Landscaping PM Center Dr/County Line	4,542	32,500	-
Transportation study	-	-	50,000
Landscape improvements	10,779	57,000	-
County Line improvements	40,000	-	-
Yosemite landscaped medians	-	1,000	10,000
C-470 Coalition - Douglas County	100,000	-	100,000
Storm sewer improvements	95,685	40,000	135,000
Park Meadows Reconstruct (W of Acres Green)	1,698,888	-	-
Park Meadows Medians (W of Acres Green)	-	10,000	-
Parkway Drive crossing Willow Creek	-	-	50,000
Light Rail Extension	-	-	-
Lone Tree Link	-	250,000	500,000
Walk and Wheel Study	-	90,000	-
Brick fence	13,800	-	-

**CITY OF LONE TREE  
GENERAL FUND  
FORECASTED 2015 BUDGET AS ADOPTED  
WITH 2013 ACTUALS AND 2014 ESTIMATED**

EXPENDITURE DETAIL - Continued

	2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
<b>EXPENDITURES (Continued)</b>			
<b>CAPITAL OUTLAY (Continued)</b>			
Lincoln Pedestrian Bridge	-	-	4,000,000
Parkway Drive Reconstruction	-	-	1,200,000
Yosemite Turn Lane (Maximus to PMD)	-	-	850,000
Lincoln/I-25 Ramp Improvements	-	-	430,000
County Line/PMCD Intersection Improvements	-	-	450,000
LTAC Road Construction	-	-	133,000
LTAC Pad enhancements	-	-	25,000
Town Ridge Drive Construction	-	-	300,000
Public art project	-	14,500	210,500
Police Department substation	-	-	60,000
Schweiger Ranch preservation	-	75,000	75,000
Retail retention agreement	75,000	75,000	75,000
Service provider shareback agreement	-	10,000	10,000
Annexation shareback agreement	732	27,188	30,000
County public improvements shareback	2,200,000	-	-
Reimbursement of sales taxes to PMBID	5,090,889	5,360,000	5,479,000
Reimbursement property taxes-PMBID for PMMD	184,379	209,962	215,000
<b>TOTAL CAPITAL OUTLAY</b>	<b>14,568,838</b>	<b>9,529,760</b>	<b>18,468,000</b>
 Total expenditures	 28,650,974	 24,622,465	 34,139,798
<b>TRANSFERS OUT</b>			
Special Revenue Fund - Arts Center	717,851	924,496	1,029,436
Special Revenue Fund - RidgeGate	-	-	-
Total transfers out	717,851	924,496	1,029,436
 Total appropriation	 29,368,825	 25,546,961	 35,169,234
 <b>ENDING FUND BALANCE</b>	 <b>\$ 14,447,335</b>	 <b>\$ 17,462,720</b>	 <b>\$ 14,608,904</b>

**CITY OF LONE TREE  
SPECIAL REVENUE FUND - RIDGEGATE  
FORECASTED 2015 BUDGET AS ADOPTED  
WITH 2013 ACTUALS AND 2014 ESTIMATED**

	2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
<b>BEGINNING FUND BALANCE</b>	\$ (273,873)	\$ 98,726	\$ 52,601
<b>REVENUE</b>			
Sales tax	1,396,339	2,039,000	1,895,000
Use tax-retail	384,846	410,000	420,000
Use tax - building materials	1,761,686	904,000	944,000
Lodging tax	149,586	190,000	195,000
Franchise fees - electric and gas	110,007	125,000	128,000
Franchise fees - cable	4,476	4,000	4,200
Highway Users Tax (HUTF)	84,453	92,950	116,288
Building permit fees	1,140,934	1,381,000	717,000
Planning and zoning fees	18,359	12,500	13,000
Engineering fees	126,934	75,000	100,000
Schweiger Ranch grants and contributions	-	75,000	75,000
Net investment income	2,256	1,520	1,716
Developer reimbursement	-	-	-
Reimbursable costs	-	-	-
Other	23,552	37,069	10,000
Total revenue	5,203,428	5,347,039	4,619,204
<b>TRANSFERS IN</b>			
General Fund	-	-	-
Total transfers in	-	-	-
Total funds available	\$ 4,929,555	\$ 5,445,765	\$ 4,671,805

**CITY OF LONE TREE  
SPECIAL REVENUE FUND - RIDGEGATE  
FORECASTED 2015 BUDGET AS ADOPTED  
WITH 2013 ACTUALS AND 2014 ESTIMATED**

2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
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**EXPENDITURES**

City Administration - salaries and benefits	\$ 167,699	\$ 193,475	\$ 207,401
Legal	39,298	6,300	10,000
Finance - consultant	50,709	-	-
Administration and overhead costs	157,284	200,000	200,000
Insurance	89,340	81,000	85,050
Audit	4,799	5,000	5,000
Engineering	323,291	250,000	250,000
Community Development	200,142	197,824	232,970
Consulting	-	35,000	-
Police Department	1,154,963	1,422,729	1,722,662
Street lighting	5,137	5,500	6,000
Snow removal	113,322	177,250	70,000
Schweiger Ranch Preservation	-	75,000	75,000
Retail shareback	353,512	556,041	567,162
Service provider shareback	-	200,000	-
Developer revenue shareback	1,283,765	1,162,286	681,636
Reimbursement related to annexation agreement	-	-	-
Miscellaneous	-	1,000	1,000
Total expenditures	3,943,260	4,568,406	4,113,881

**TRANSFERS OUT**

General Fund	887,569	824,758	505,323
Total transfers out	887,569	824,758	505,323
Total appropriation	4,830,829	5,393,164	4,619,204

**ENDING FUND BALANCE**

	\$ 98,726	\$ 52,601	\$ 52,601
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**CITY OF LONE TREE**  
**SPECIAL REVENUE FUND - CULTURAL AND COMMUNITY SERVICES FUND**  
**FORECASTED 2015 BUDGET AS ADOPTED**  
**WITH 2013 ACTUALS AND 2014 ESTIMATED**

	2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
<b>BEGINNING FUND BALANCE</b>	\$ -	\$ -	\$ -
<b>REVENUE</b>			
<b>LONE TREE ARTS CENTER</b>			
Operating			
Ticket sales	684,923	956,997	1,060,180
Handling fees	93,296	93,500	93,000
Rental fees	108,951	108,900	100,900
Labor fees	78,508	65,943	59,500
Concessions and catering	86,826	87,000	91,000
Miscellaneous	4,128	5,000	3,000
Education	20,546	-	-
Non-Operating			
Individual, corporate and foundation contributions	137,925	151,500	210,000
Government grants	110,625	137,288	197,150
Fundraising	-	-	-
<b>TOTAL LONE TREE ARTS CENTER</b>	<b>1,325,728</b>	<b>1,606,128</b>	<b>1,814,730</b>
<b>OTHER</b>			
Annual Events	26,820	34,000	11,000
Arts and cultural events	17,323	9,000	9,000
<b>TOTAL OTHER</b>	<b>44,143</b>	<b>43,000</b>	<b>20,000</b>
Total revenue	1,369,871	1,649,128	1,834,730
<b>TRANSFERS IN</b>			
General Fund - Lone Tree Arts Center	425,340	650,424	674,804
General Fund - Annual events	169,011	191,000	270,732
General Fund - Arts and cultural events	118,188	68,072	68,900
General Fund - Park and recreation	5,312	15,000	15,000
Total transfers in	717,851	924,496	1,029,436
Total funds available	\$ 2,087,722	\$ 2,573,624	\$ 2,864,166

**CITY OF LONE TREE**  
**SPECIAL REVENUE FUND - CULTURAL AND COMMUNITY SERVICES FUND**  
**FORECASTED 2015 BUDGET AS ADOPTED**  
**WITH 2013 ACTUALS AND 2014 ESTIMATED**

2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
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**EXPENDITURES**

**LONE TREE ARTS CENTER**

Administration	119,419	158,860	160,217
Programming	1,170,687	1,617,747	1,682,014
Marketing	359,214	407,802	432,308
Education	42,666	5,772	-
Miscellaneous	15,889	19,741	21,000
Development	43,193	46,630	153,995
Contingency	-	-	40,000
<b>TOTAL LONE TREE ARTS CENTER</b>	1,751,068	2,256,552	2,489,534

**OTHER**

Annual events	195,831	225,000	281,732
Arts and cultural events	135,511	77,072	77,900
Recreational activities and support	5,312	15,000	15,000
<b>TOTAL OTHER</b>	336,654	317,072	374,632

Total expenditures	2,087,722	2,573,624	2,864,166
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**TRANSFERS OUT**

Total transfers out	-	-	-
Total appropriation	2,087,722	2,573,624	2,864,166

**ENDING FUND BALANCE**

	\$ -	\$ -	\$ -
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**CITY OF LONE TREE**  
**DEBT SERVICE FUND - ARTS AND CULTURAL FACILITIES**  
**FORECASTED 2015 BUDGET AS ADOPTED**  
**WITH 2013 ACTUALS AND 2014 ESTIMATED**

	2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
<b>BEGINNING FUND BALANCE</b>	\$ 450,224	\$ 568,947	\$ 649,141
<b>REVENUE</b>			
Sales tax	1,577,027	1,624,000	1,658,000
Use tax - retail	29,804	25,000	25,500
Use tax - building materials	17,897	20,000	20,400
Net investment income	352	600	600
Total revenue	<u>1,625,080</u>	<u>1,669,600</u>	<u>1,704,500</u>
<b>TRANSFERS IN</b>			
General Fund	-	-	-
Total transfers in	<u>-</u>	<u>-</u>	<u>-</u>
Total funds available	<u>2,075,304</u>	<u>2,238,547</u>	<u>2,353,641</u>
<b>EXPENDITURES</b>			
Bond interest	524,556	499,206	471,756
Bond principal	845,000	915,000	985,000
Paying agent fees	200	200	200
Contingency	-	-	3,044
Total expenditures	<u>1,369,756</u>	<u>1,414,406</u>	<u>1,460,000</u>
<b>TRANSFERS OUT</b>			
General Fund	136,601	175,000	127,500
Total transfers out	<u>136,601</u>	<u>175,000</u>	<u>127,500</u>
Total appropriation	<u>1,506,357</u>	<u>1,589,406</u>	<u>1,587,500</u>
<b>ENDING FUND BALANCE</b>	<u>\$ 568,947</u>	<u>\$ 649,141</u>	<u>\$ 766,141</u>

**CITY OF LONE TREE**  
**DEBT SERVICE FUND - PARK AND RECREATION IMPROVEMENTS**  
**FORECASTED 2015 BUDGET AS ADOPTED**  
**WITH 2013 ACTUALS AND 2014 ESTIMATED**

	2013 ACTUAL	2014 ESTIMATED	2015 ADOPTED
<b>BEGINNING FUND BALANCE</b>	\$ 597,598	\$ 682,980	\$ 776,367
<b>REVENUE</b>			
Sales tax	1,051,984	1,082,000	1,105,000
Use tax - retail	19,881	17,000	17,300
Use tax - building materials	11,925	14,000	14,300
Net investment income	592	800	800
Total revenue	<u>1,084,382</u>	<u>1,113,800</u>	<u>1,137,400</u>
<b>TRANSFERS IN</b>			
General Fund	-	-	-
Total transfers in	<u>-</u>	<u>-</u>	<u>-</u>
Total funds available	<u>1,681,980</u>	<u>1,796,780</u>	<u>1,913,767</u>
<b>EXPENDITURES</b>			
Bond interest	443,800	420,213	394,713
Bond principal	555,000	600,000	645,000
Paying agent fees	200	200	200
Contingency	-	-	5,087
Total expenditures	<u>999,000</u>	<u>1,020,413</u>	<u>1,045,000</u>
<b>TRANSFERS OUT</b>			
Total transfers out	<u>-</u>	<u>-</u>	<u>-</u>
Total appropriation	<u>999,000</u>	<u>1,020,413</u>	<u>1,045,000</u>
<b>ENDING FUND BALANCE</b>	<u>\$ 682,980</u>	<u>\$ 776,367</u>	<u>\$ 868,767</u>



CITY OF LONE TREE  
STAFF REPORT

**TO: Mayor Gunning and City Council**

**FROM: Kristin Baumgartner, Finance Director**

**DATE: December 9, 2014**

**FOR: December 16, 2014, City Council Meeting**

**SUBJECT: Public Hearing: Resolution 14-24, ADOPTING A SUPPLEMENTAL BUDGET AND APPROPRIATION FOR FY2014 DUE TO UNANTICIPATED REVENUES OR REVENUES NOT ASSURED AT THE TIME OF ADOPTION OF THE BUDGET**

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Summary

Based on unanticipated revenues in the Special Revenue Fund – RidgeGate related to sales taxes generated from new vendors as well as construction related revenues, the 2014 budget for this funds needs to be amended. Pursuant to the current annexation agreement, after expenditures are netted against revenues, the remaining amount is split between the developer and the City (60% to the developer and 40% to the City). Since the revenues are anticipated to come in higher than originally budgeted, the corresponding shareback is anticipated to be higher than originally budgeted, therefore requiring the attached budget amendment for 2014.

Cost

N/A

Suggested Motion or Recommended Action

I move to approve Resolution 14-24, ADOPTING A SUPPLEMENTAL BUDGET AND APPROPRIATION FOR FY2014 DUE TO UNANTICIPATED REVENUES OR REVENUES NOT ASSURED AT THE TIME OF ADOPTION OF THE BUDGET.

**CITY OF LONE TREE  
RESOLUTION NO. 14-24**

**A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET AND  
APPROPRIATION FOR FY2014 DUE TO UNANTICIPATED REVENUES OR  
REVENUES NOT ASSURED AT THE TIME OF ADOPTION OF THE BUDGET**

WHEREAS, the City of Lone Tree anticipated total funds available from the Special Revenue Fund – RidgeGate of \$5,054,326 for FY2014, which were reflected in the City’s FY2014 budget; and

WHEREAS, the City budgeted and appropriated to the Special Revenue Fund – RidgeGate total expenditures requiring appropriations of \$5,001,725 for FY2014, leaving additional funds unappropriated and not made available for expenditure; and

WHEREAS, the City currently anticipates total funds available from the Special Revenue Fund – RidgeGate amounting to \$5,576,991 for FY2014, which additional funds were not reflected in the City’s FY2014 budget; and

WHEREAS, the additional funds available and the unappropriated and unspent funds were unanticipated revenue or revenue not assured at the time of adoption of the City budget for FY2014, as they were not expected to be available and expended in FY2014, and such availability and possible expenditure could not be foreseen at the time of the adoption of the budget for FY2014; and

WHEREAS, the City wishes to enact a supplemental budget and appropriation increasing its Special Revenue Fund – RidgeGate total expenditures requiring appropriation to \$5,524,390 for FY2014; furthermore

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF  
THE CITY OF LONE TREE, COLORADO:**

1. All of the foregoing paragraphs are incorporated by reference as though fully set forth herein.
2. Pursuant to Section 29-1-109, C.R.S., the City determines that there have been unanticipated revenues or revenues not assured at the time of the adoption of the FY2014 budget allocated to the Special Revenue Fund – RidgeGate, due to the reasons set forth above.
3. The City hereby enacts a supplemental budget and appropriation, attached to this Resolution as Exhibit A, authorizing total expenditures of \$5,524,390 from the Special Revenue Fund – RidgeGate for FY2014.
4. The City hereby authorizes and ratifies such expenditures for FY2014.

5. The City has complied with the notice provisions of Section 29-1-106, C.R.S.

6. The City Clerk is hereby directed to file a certified copy of this Resolution with the Division of Local Government in the Department of Local Affairs.

ADOPTED AND APPROVED THIS 16<sup>th</sup> DAY OF DECEMBER, 2014.

**CITY OF LONE TREE**

By: \_\_\_\_\_  
James D. Gunning, Mayor

ATTEST:

(SEAL)

\_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

**CITY OF LONE TREE  
SPECIAL REVENUE FUND - RIDGEGATE  
2014 ORIGINAL BUDGET AND 2014 AMENDED BUDGET  
EXHIBIT A**

	2014 BUDGET	2014 AMENDED
<b>BEGINNING FUND BALANCE</b>	\$ 52,601	\$ 98,726
<b>REVENUE</b>		
Sales tax	1,818,000	2,139,000
Use tax-retail	687,000	450,000
Use tax - building materials	965,000	904,000
Lodging tax	158,100	190,000
Franchise fees - electric and gas	110,250	125,000
Franchise fees - cable	4,700	4,000
Highway Users Tax (HUTF)	84,175	84,175
Building permit fees	963,000	1,381,000
Planning and zoning fees	20,000	12,500
Engineering fees	110,000	75,000
Schweiger Ranch grants and contributions	75,000	75,000
Net investment income	1,500	1,520
Other	5,000	37,070
Total revenue	5,001,725	5,478,265
<b>TRANSFERS IN</b>		
General Fund	-	-
Total transfers in	-	-
Total funds available	\$ 5,054,326	\$ 5,576,991

**CITY OF LONE TREE  
SPECIAL REVENUE FUND - RIDGEGATE  
2014 ORIGINAL BUDGET AND 2014 AMENDED BUDGET  
EXHIBIT A**

2014 BUDGET	2014 AMENDED
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**EXPENDITURES**

City Administration - salaries and benefits	\$	203,554	203,554
Legal		20,000	20,000
Administration and overhead costs		220,000	220,000
Insurance		76,900	81,000
Audit		5,000	5,000
Engineering		300,000	300,000
Community Development		208,024	208,024
Consulting		35,000	35,000
Police Department		1,556,317	1,422,729
Street lighting		5,000	5,500
Snow removal		125,000	177,250
Schweiger Ranch Preservation		75,000	75,000
Retail shareback		480,675	556,041
Service provider shareback		200,000	200,000
Developer revenue shareback		865,870	1,171,580
Contingency		5,000	12,758
Total expenditures		4,381,340	4,693,436

**TRANSFERS OUT**

General Fund		620,385	830,954
Total transfers out		620,385	830,954

Total appropriation		5,001,725	5,524,390
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**ENDING FUND BALANCE**

	\$	52,601	\$ 52,601
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**CITY OF LONE TREE  
SPECIAL REVENUE FUND - RIDGEGATE  
2014 ORIGINAL BUDGET AND 2014 AMENDED BUDGET  
EXHIBIT A**

	2014 BUDGET	2014 AMENDED
<b>BEGINNING FUND BALANCE</b>	\$ 52,601	\$ 98,726
<b>REVENUE</b>		
Sales tax	1,818,000	2,139,000
Use tax-retail	687,000	450,000
Use tax - building materials	965,000	904,000
Lodging tax	158,100	190,000
Franchise fees - electric and gas	110,250	125,000
Franchise fees - cable	4,700	4,000
Highway Users Tax (HUTF)	84,175	84,175
Building permit fees	963,000	1,381,000
Planning and zoning fees	20,000	12,500
Engineering fees	110,000	75,000
Schweiger Ranch grants and contributions	75,000	75,000
Net investment income	1,500	1,520
Other	5,000	37,070
Total revenue	5,001,725	5,478,265
<b>TRANSFERS IN</b>		
General Fund	-	-
Total transfers in	-	-
Total funds available	\$ 5,054,326	\$ 5,576,991

**CITY OF LONE TREE  
SPECIAL REVENUE FUND - RIDGEGATE  
2014 ORIGINAL BUDGET AND 2014 AMENDED BUDGET  
EXHIBIT A**

2014 BUDGET	2014 AMENDED
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**EXPENDITURES**

City Administration - salaries and benefits	\$	203,554	203,554
Legal		20,000	20,000
Administration and overhead costs		220,000	220,000
Insurance		76,900	81,000
Audit		5,000	5,000
Engineering		300,000	300,000
Community Development		208,024	208,024
Consulting		35,000	35,000
Police Department		1,556,317	1,422,729
Street lighting		5,000	5,500
Snow removal		125,000	177,250
Schweiger Ranch Preservation		75,000	75,000
Retail shareback		480,675	556,041
Service provider shareback		200,000	200,000
Developer revenue shareback		865,870	1,171,580
Contingency		5,000	12,758
Total expenditures		4,381,340	4,693,436

**TRANSFERS OUT**

General Fund		620,385	830,954
Total transfers out		620,385	830,954

Total appropriation		5,001,725	5,524,390
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**ENDING FUND BALANCE**

	\$	52,601	\$ 52,601
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CITY OF LONE TREE  
STAFF REPORT

**TO: Mayor Gunning and City Council**

**FROM: Jennifer Pettinger, CMC, City Clerk**

**DATE: December 9, 2014**

**FOR: December 16, 2014 City Council Agenda Item**

**SUBJECT: Resolution 14-25, Regarding Annual Administrative Matters for the City of Lone Tree for 2015**

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Summary

Our annual administrative resolution is attached.

Cost

There are no direct costs associated with this resolution.

Suggested Motion or Recommended Action

I move to approve Resolution 14-25, Regarding Annual Administrative Matters for the City of Lone Tree for 2015.

Background

Each year we approve our administrative resolution. The only change to this year's resolution (other than dates and staff changes) is the removal of the requirement to prepare and file the Certificate of Compliance (Article 29 of Title 29 C.R.S. regarding Immigration Status – Cooperation with Federal Officials) with the Department of Local Affairs. Article 29 was repealed in 2013.

**CITY OF LONE TREE  
RESOLUTION NO. 14-25**

**A RESOLUTION REGARDING  
ANNUAL ADMINISTRATIVE MATTERS  
FOR THE CITY OF LONE TREE FOR 2015**

WHEREAS, the City Council has a duty to perform certain obligations on a recurring basis in order to assure the efficient operation of the City; and

WHEREAS, the City Council has directed the administrative work of the City to be accomplished by its City Manager, City Clerk, Department Heads and consultants who act as the City Attorney, City Engineer, and Director of Public Works, (collectively the "Staff"); and

WHEREAS, the City Council desires to confirm certain general procedures for the conduct of its business and to authorize its elected officials and Staff to perform certain administrative activities; and

WHEREAS, the matters set forth in this Resolution are statements of intention, and may be modified by action of the City Council, from time to time, without prior notice except where required by law and without waiving on a continuing basis these or other policies established by the City and its Charter (the "Charter");

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LONE TREE, COLORADO:

1. Pursuant to Article IV, Section 1 & 2 of the Charter, the City Council determines to hold regular meetings on the 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of every month at 6:00 p.m., at 8527 Lone Tree Parkway, in Lone Tree, Colorado. Study sessions may commence at 4:30 p.m. on each such date.
2. Should an individual City Council member or the Mayor choose to abstain from any particular matter on the agenda for reasons of potential conflict of interest, he or she shall be considered in attendance at the meeting for purposes of meeting quorum requirements.
3. The City Council has adopted Ordinance 07-06 establishing rules for the governance of City Council Meetings.
4. Pursuant to Article IV, Section 7 of the Charter, and in addition to Paragraph 1 of this Resolution, the City Council may hold study sessions as the Mayor or any two Council members may request upon at least twenty-four hours written notice to each Council member and by public notice through posting procedures established by this Resolution. No quorum shall be required at any such study session and no legally binding or formal action shall be taken at any such session.
5. Pursuant to Article IV, Section 4(a) of the Charter, City Council designates 9220 Kimmer Drive, Suite 100, Lone Tree, Colorado, as the posting place for notices of meetings, in

accordance with Section 24-6-402(2)(c), C.R.S., which were not otherwise posted under Title 31, C.R.S. The City Council directs the City Clerk to prepare notices for posting at the specified location.

6. The City Council designates the *Douglas County News-Press* as the newspaper of general circulation within the boundaries of the City, and wherein all legal notices and publications for the City shall be published, unless otherwise required by state law.

7. The City Manager shall be designated as the contact person with the Colorado Division of Local Government.

8. The City Council acknowledges that in accordance with section 24-6-203, C.R.S., each City Council member who receives from another person any item described in subsection (3) of that section in connection with his or her public service is required to file with the City Clerk on or before January 15, April 15, July 15, and October 15 of each year, on a form prescribed by the Secretary of State, a report covering the period since the last report. No report needs to be filed if a City Council member does not receive any of the described items.

9. Minutes of all City Council regular and special meetings shall be taken by the City Clerk stating only the subject matter and final action taken by City Council, together with such supplemental notes as are requested by the City Council members and which are approved by the Mayor or by majority vote of the City Council including the Mayor. Public meetings may be tape recorded for purposes of assisting the City Clerk to prepare accurately the official written Minutes. Tape recordings shall not constitute the official record of the City Council nor shall they constitute public records within the meaning of Colorado law. Each executive session discussion shall be electronically recorded as required by subsection 24-6-402(d.5)(I)(A), C.R.S., and each recording shall be retained for ninety (90) days after the date of the recording pursuant to subsection 24-6-402(d.5)(I)(E), C.R.S.

10. The City Council hereby appoints Jennifer Pettinger as the Lone Tree City Clerk and appoints the City Manager as the Lone Tree City Treasurer.

11. The City Council hereby appoints John Cotten as the Public Works Director and Greg Weeks as the City Engineer.

12. The City Council hereby appoints Neil Rutledge of White Bear Ankele Tanaka & Waldron, P.C., as the City Attorney, to act as the City Attorney in all legal matters, with authority to engage or use associates and/or special counsel as Mr. White deems appropriate after advising the City Council.

13. The City Council hereby reaffirms the appointment of Louis Gresh as the Lone Tree Municipal Judge with a fixed annual compensation of \$60, payable at \$5 per month. In addition to Judge Gresh's annual compensation, he will be compensated \$250 for the first two hours of each court session and \$125 for each additional hour.

14. The City Council hereby designates each of the following attorneys who possess the qualifications for the office to serve as a temporary judge on an ad hoc basis in Judge Gresh's absence: Brad Yoder, Zoe Cole and Beth Elliot Dumler. The City Council hereby sets temporary judge's compensation to be fixed at \$250 for the first two hours of each court session and \$125 for each additional hour.

15. The City Council hereby appoints Louis Gresh as Hearing Officer for the City of Lone Tree Local License Authority Compliance Division and Administrative Appeal Officer for the City of Lone Tree Sexually Oriented Businesses Licensing with compensation to be fixed at \$250 for the first two hours of each session and \$125 for each additional hour.

16. The City Clerk is hereby appointed as the "Designated Election Official" of the City for any elections to be held by the City. In accordance with Title 31, C.R.S., the City Council hereby grants all powers and authority for the proper conduct of the election to the Designated Election Official, including but not limited to appointing election judges, appointing a canvass board and cancellation, if applicable, of the election.

17. The City Council hereby appoints the Zoning and Development Services Coordinator to be the City Forester. The duties of the City Forester are as stated in the City of Lone Tree Resolution 01-21, and any previous appointment to that position is hereby repealed.

18. The City Manager shall have the authority to enter into Subdivision Improvement Agreements, the Site Improvement Plan Improvements Agreement and the Public Improvements Agreement on behalf of the City, such agreements to be substantially similar in form and substance to the Form Subdivision Improvement Agreement approved by the City Council. The City Manager shall also have the authority to enter into and amend easement, license and other administrative documents on behalf of the City.

19. In accordance with section 6-1-210 of the Municipal Code, the City Manager shall have the authority to conduct all administrative matters related to the City of Lone Tree Local Liquor Licensing Authority that do not require a public hearing.

20. The City Manager directs the City Clerk to prepare and file the annual Liquor and Beer Code Violation Hearing Report Form with the Colorado Department of Revenue no later than January 9, 2015.

21. The City Manager directs the Chief of Police to complete the Arrestee Immigration Status Form (SB06-90) and submit to the Office of the Legislative Council no later than March 1, 2015.

22. The City Treasurer shall be responsible for preparation of the budget for the City, shall manage the accounting and auditing services for the City to be performed by such persons as are authorized by the City Council, shall manage the public funds in accordance with all applicable Colorado laws and only by direction of the City Council, and shall report to the City Council on a monthly basis in written form the status of the City's financial accounts and records.

23. The City Manager shall direct Staff to submit a proposed budget to the City Council by October 15, 2015 and to schedule a public hearing on the proposed budget; to prepare a final budget and budget resolution, to prepare amendments to the budget if necessary, and to file the approved budget and any amendments thereto with the proper governmental entities in accordance with the Local Government Budget Law of Colorado, sections 29-1-101 to 29-1-115, C.R.S.

24. The City Manager shall direct the City Clerk to file a certified copy of the budget to the Department of Local Governments in accordance with the Local Government Budget Law of Colorado, sections 29-1-113, C.R.S.

25. The City Manager shall direct the City Clerk to forward a copy of the audit report to the state auditor within thirty days after receipt of said audit in accordance with Local Government Budget Law of Colorado, section 29-1-606, C.R.S.

26. The City Council directs the City Attorney to oversee the preparation of any continuing annual disclosure report required to be filed in accordance with the Securities Exchange Commission Rule 15c2-12, if required.

27. The City Council directs the City Attorney to prepare and file an informational listing of all contracts in effect with other political subdivisions with the Division of Local Government on or before February 1, 2015, as required by section 29-1-205, C.R.S.

28. The City Council directs the City Attorney to prepare the Unclaimed Property Act report and forward to the State Treasurer by November 1, 2015, if there is property presumed abandoned and subject to custody as unclaimed property, in accordance with section 38-13-110, C.R.S., if required.

29. The zoning map, as amended from time to time, shall be the official City map. A copy of the official City map, showing the City's boundaries, is attached as Appendix A and shall be kept on file at the offices of the City Engineer, TST Inc. of Denver, 9222 Teddy Lane, in Lone Tree, Colorado, and shall be available for examination by all interested persons.

30. As of this date, the City Council hereby reaffirms all existing contractual relationships subject to annual appropriation, including, but not limited to, contractual relationships with TST Inc. of Denver and White Bear Ankele Tanaka & Waldron, P.C..

31. The following agreements concerning annexation and sales tax rebate arrangements are subject to annual appropriation and are deemed renewed:

- i. Agreement with Colony Investments, Inc.
- ii. Agreement with Park Meadows Business Improvement District
- iii. Agreement with Cabela's Wholesale Inc.
- iv. Agreement with Kaiser Foundation Hospitals
- v. Agreement with HCA-HealthONE LLC
- vi. Agreement with tw Telecom Inc.
- vii. Agreement with Best Buy

32. The City Council directs that an audit of the financial statements be prepared and submitted to the City Council within six (6) months after fiscal year end. The City Council further directs that the audit be filed with the State Auditor no later than thirty (30) days after the fiscal year audit is received by the City, as required by section 29-1-603, C.R.S.

33. The City Council directs the City Manager to obtain proposals for insurance and to insure the City against all or any part of the City's liability for injury, to insure the Mayor, City Council members, and City employees acting within the scope of employment by the City Council against all or any part of such liability for any injury, and to insure against the expense of defending a claim for injury against the City or its City Council. The City Council will annually review all insurance policies in effect.

34. The fee schedules contained in past resolutions or ordinances for services which might be provided by the City to members of the public, including certification of documents, notarization of signatures, and other activities shall be extended indefinitely. Any resolution or ordinance concerning fee schedules that is passed subsequent to this Resolution shall supersede the provisions of this section.

35. City Council members and the Mayor shall continue to receive a stipend in the amount established under the immediately preceding version of this Resolution plus 3% thereof as contemplated by the Charter.

36. These procedures, rules, and duties may be supplemented from time to time in written format either by adoption of additional resolutions or by action reflected in the minutes for the City Council.

37. The effective date of this resolution is January 1, 2015.

ADOPTED AND APPROVED THIS 16<sup>th</sup> DAY OF DECEMBER, 2014.

**CITY OF LONE TREE**

By: \_\_\_\_\_  
James D. Gunning, Mayor

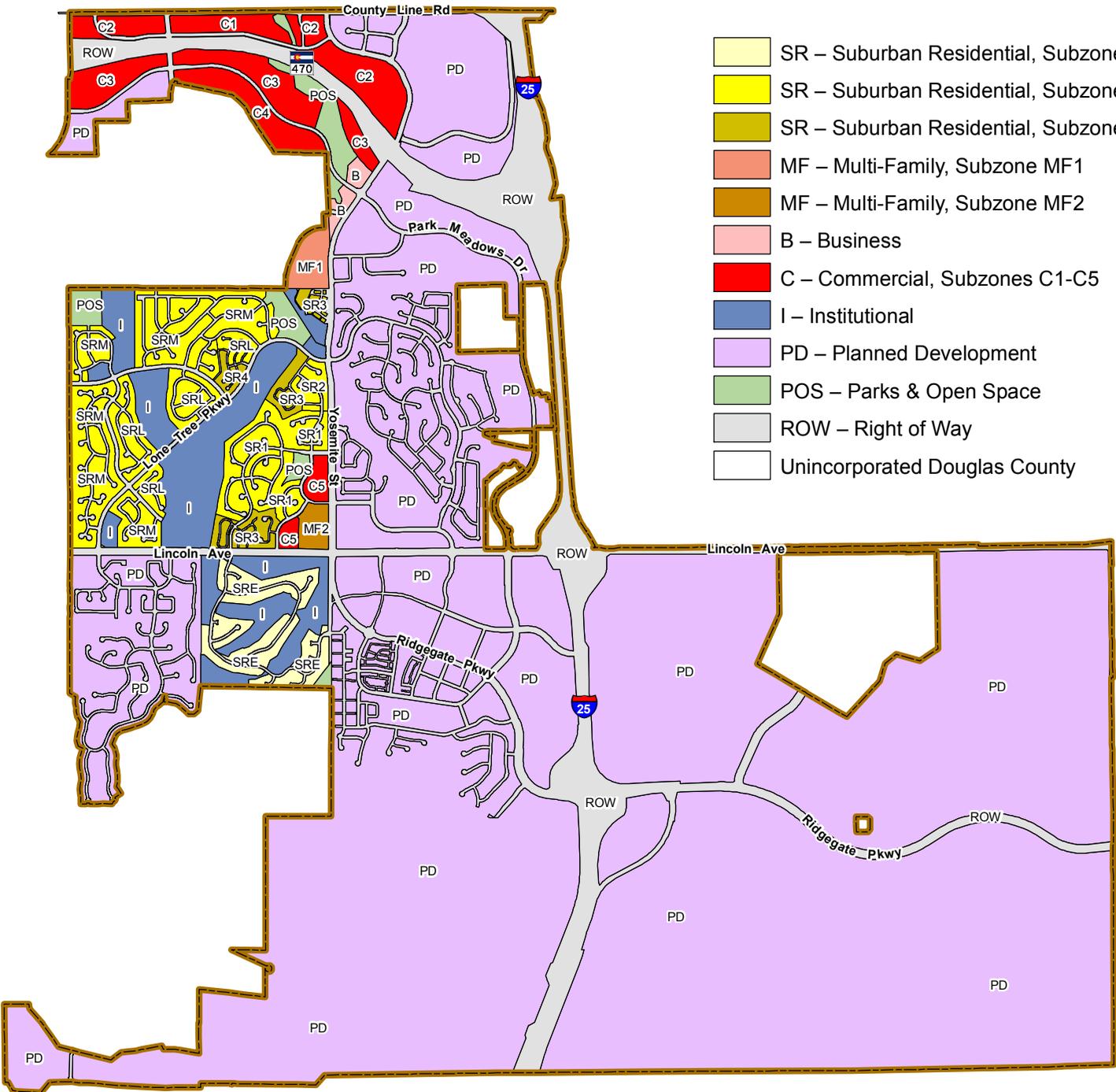
**ATTEST:**

( S E A L )

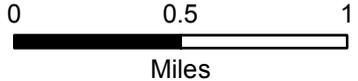
\_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

Appendix A

# City of Lone Tree Zoning Map



- SR – Suburban Residential, Subzone SRE
- SR – Suburban Residential, Subzones SR1, SR2, SRL & SRM
- SR – Suburban Residential, Subzones SR3 & SR4
- MF – Multi-Family, Subzone MF1
- MF – Multi-Family, Subzone MF2
- B – Business
- C – Commercial, Subzones C1-C5
- I – Institutional
- PD – Planned Development
- POS – Parks & Open Space
- ROW – Right of Way
- Unincorporated Douglas County



*I hereby certify that this is the Official Zoning Map of the City of Lone Tree duly adopted by Ordinance 09-09 on December 15, 2009 and reaffirmed by Resolution 14-25 on December 16, 2014.*

*James D. Gunning, Mayor*

Attest:

The City has numerous Planned Development (PD) zonings. Specific PDs are noted on the City's website ([www.cityoflonetree.com](http://www.cityoflonetree.com)), or contact the Community Development Department for more information at 303-708-1818

**CITY OF LONE TREE  
RESOLUTION NO. 14-26**

**A RESOLUTION APPOINTING A MEMBER TO THE  
CITY OF LONE TREE AUDIT COMMITTEE**

WHEREAS, on May 6, 2003, the City Council of the City of Lone Tree adopted Resolution No. 03-14 creating the Audit Committee (the "Committee"), for the purpose of enhancing the independence of the external financial auditor and the reliability of the City's financial statement audits; and

WHEREAS, Resolution 09-15, increased the membership of the Committee to consist of six (6) members: three (3) appointed City residents who are certified public accountants or otherwise possess the expertise and experience in accounting, auditing, financial reporting and finance needed to understand and resolve issues raised by the independent audit of the City's finance statements; one (1) member of the City Council; the City Manager; and the City's Chief Financial Officer. The City Manager and the City's Chief Financial Officer serve as ex-officio, non-voting members; and

WHEREAS, there will be a vacancy on the Committee created by Chris Howson's resignation; and

WHEREAS, the City Council desires to appoint a member to that vacancy, such appointment to be effective on January 1, 2015.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF LONE TREE, COLORADO:**

That Peter Frenchman is hereby appointed to the Committee for the vacancy created by the resignation of Chris Howson for the remainder of his term, which expires on December 31, 2016. Mr. Frenchman's appointment is effective as of January 1, 2015.

**APPROVED AND ADOPTED THIS 16<sup>th</sup> DAY OF DECEMBER, 2014.**

**CITY OF LONE TREE**

\_\_\_\_\_  
James D. Gunning, Mayor

**ATTEST:**

\_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk

(S E A L)



**CITY OF LONE TREE  
STAFF REPORT**

**TO: Mayor Gunning and City Council**

**FROM: Seth Hoffman, City Manager**

**DATE: Wednesday, December 10, 2014**

**FOR: Tuesday, December 16, 2014 City Council Study Session**

**SUBJECT: First Amendment to RidgeGate West Side Annexation and Development Agreement**

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Background

RidgeGate is a master-planned development managed and owned by Coventry Development Corporation that lies south of Lincoln Avenue in the City, on both the west and east sides of Interstate 25. These areas became part of the City of Lone Tree in 2001; the original annexation agreement to bring them into the City was recorded on September 5, 2000, and the original sales tax sharing agreement for the areas was recorded on October 17, 2001. Development of RidgeGate on the west side of I-25 began with the construction and opening of Sky Ridge Medical Center in 2003. Staff from City, RidgeGate, and infrastructure provider Rampart Range Metropolitan District are now planning ahead for development of the East side of RidgeGate, which could start as soon as the next 5-10 years, depending on when the right, large-scale catalytic project arrives to kick it off. The recent first approval of the Southeast Extension by the RTD Board of Directors is a promising sign that development plans for that area are proceeding as hoped, despite the recent recession.

Updated Agreement

This amendment to this agreement covers the west side of RidgeGate only, as shown on the attached map. It replaces the original 2001 agreement for that area. Once this West Side agreement is approved, we will begin negotiating a replacement agreement of the East side.

Additionally, as part of this updated agreement, certain streets in the RidgeGate area will now be dedicated to, and then accepted and maintained by the City.

Cost

Shareback calculations will be adjusted pursuant to the new agreement. Additionally, with the acceptance of certain streets into the City, we estimate capital costs related to road improvements will be incurred over the next five years with a portion of these costs to be reimbursed by the Rampart Range Metro District.

Additionally, the budget will be amended in 2015 to reflect that the City no longer has to use a special revenue fund to account for West side financial activity. This will come back to Council for action early next year.

Suggested Motion or Recommended Action

I move to approve the First Amendment to the Annexation and Development Agreement with RidgeGate Investments, Inc.

I move to approve RidgeGate West Side Agreement Regarding Dedication, Acceptance and Maintenance of Public Improvements and Sales Tax Sharing.

I move to approve the Amendment to Sales Tax Sharing Agreement between the City and RidgeGate Investments, Inc. effective January 1, 2015.

**FIRST AMENDMENT  
TO  
ANNEXATION AND DEVELOPMENT AGREEMENT**

This First Amendment (this "Amendment") is entered into effective as of January 1, 2015 between RIDGEGATE INVESTMENTS, INC., a Delaware corporation ("RidgeGate"), and the CITY OF LONE TREE, a home rule municipal corporation and political subdivision of the State of Colorado (the "City").

Recitals

A. The City and RidgeGate (as assignee of Colony Investments, Inc.) are parties to that certain Annexation and Development Agreement recorded in the real property records of Douglas County, Colorado on September 5, 2000 in Book 1890 at Page 2324 (the "Annexation Agreement"). Capitalized terms used herein and not defined shall have the meanings given such terms in the Annexation Agreement.

B. Simultaneously with the execution of this Amendment, RidgeGate, the City and Rampart Range Metropolitan District No. 1 (the "District") are entering into an agreement (the "West Side Agreement") regarding dedication, acceptance and maintenance of public improvements on the portion of the Property located on the west side of I-25 (the "West Side Property"), and the sharing of Sales Tax revenues generated from transactions occurring within, and the taxable exercise of any privilege on or with respect to, the West Side Property.

C. In connection therewith, RidgeGate and the City desire to exclude the West Side Property from certain provisions of the Annexation Agreement that are in conflict or inconsistent with the provisions of the West Side Agreement (so that such provisions shall hereafter apply only to the portion of the Property located on the east side of I-25 (the "East Side Property")), and to delete from the Annexation Agreement certain provisions that have been fully performed or are otherwise no longer applicable or relevant.

Amendment

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

1. Amendment of Definitions. The definitions of the terms Improvements, Sales Tax and Total Costs in Section I(A) of the Annexation Agreement are each hereby amended by substituting the words "East Side Property" in place of the word "Property" in each instance where the latter appears therein.

2. Amendment of Provisions Regarding City Obligations. Subsection C of Article II of the Annexation Agreement is hereby amended by substituting the words

"East Side Property" in place of the word "Property" in each instance where the latter appears therein.

3. Amendment of Sales Tax Sharing Provisions. Article IV of the Annexation Agreement and Exhibit C to the Annexation Agreement are hereby amended by substituting the words "East Side Property" in place of the word "Property" in each instance where the latter appears therein.

4. Deletion of Articles VIII and IX. Articles VIII and IX of the Annexation Agreement are hereby deleted in their entirety, the fourth sentence of subsection C(1) of Article II of the Annexation Agreement (beginning with "In paragraph IX below,") is hereby deleted, the phrase "after deducting the Total Costs relating to Lincoln Avenue Maintenance for the first five years, and thereafter," is hereby deleted from the fifth sentence of subsection C(1) of Article II of the Annexation Agreement, and the phrase "except pursuant to Section IX below related to Lincoln Avenue maintenance is hereby deleted from the last sentence of subsection C(2) of Article II of the Annexation Agreement.

5. Amendment of Notice Provision. The addresses for notices to RidgeGate in Section XIX(H) of the Annexation Agreement are amended to read as follows:

To RidgeGate:: RidgeGate Investments, Inc.  
c/o Coventry Development Corporation  
1041 Third Avenue, 2<sup>nd</sup> Floor  
New York, New York 10065  
Attn: Robert Asselbergs

with a copy to: RidgeGate Investments, Inc.  
c/o Coventry Development Corporation  
10270 Commonwealth Street, Suite B  
Lone Tree, Colorado 80124  
Attn: Keith Simon

with a copy to: Robinson Waters & O'Doriso, P.C.  
1099 18th Street, Suite 2600  
Denver, Colorado 80202  
Attn: Paul Timmins

6.

Except as specifically amended hereby, the Annexation Agreement is not altered or amended, and it remains in full force and effect.

[signature page follows]

EXECUTED as of the date first set forth above.

RIDGEGATE INVESTMENTS, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Robert Asselbergs, President

CITY OF LONE TREE, COLORADO,

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

**RIDGEGATE WEST SIDE AGREEMENT  
REGARDING  
DEDICATION, ACCEPTANCE AND MAINTENANCE OF PUBLIC  
IMPROVEMENTS AND SALES TAX SHARING**

This Agreement (this "Agreement") is entered into and is effective as of January 1, 2015 among RIDGEGATE INVESTMENTS, INC., a Delaware corporation ("RidgeGate"), RAMPART RANGE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado ("RRMD#1"), and the CITY OF LONE TREE, a home rule municipal corporation and political subdivision of the State of Colorado (the "City").

Recitals

A. The City and RidgeGate (as assignee of Colony Investments, Inc.) are parties to that certain Annexation and Development Agreement recorded in the real property records of Douglas County, Colorado on September 5, 2000 in Book 1890 at Page 2324 (the "Annexation Agreement"), and that certain Sales Tax Sharing Agreement recorded in the real property records of Douglas County, Colorado on October 17, 2001 in Book 2155 at Page 1369 (as modified by that certain Memorandum of Understanding dated May 1, 2012 ("Cabela's MOU") among the parties to this Agreement, the "2001 Sales Tax Sharing Agreement").

B. As contemplated by the Annexation Agreement and 2001 Sales Tax Sharing Agreement, RRMD#1 was created for the purpose of providing certain public improvements and services to and for the benefit of the property located within the boundaries of the special districts contemplated in the service plan that governs RRMD#1 and that is located within the boundaries of the City as a result of the annexation contemplated and authorized by the Annexation Agreement (such property annexed to the City pursuant to the Annexation Agreement is referred to herein as the "Property").

C. Simultaneously with the execution of this Agreement, RidgeGate and the City are entering into amendments to the Annexation Agreement and the 2001 Sales Tax Sharing Agreement that (a) exclude all that portion of the Property located west of I-25 (the "West Side Property") from the 2001 Sales Tax Sharing Agreement, and (b) exclude the West Side Property from the provisions of the Annexation Agreement regarding dedication and maintenance of public improvements and the sharing of revenues generated from any sales tax, lodging tax, admissions tax or use tax imposed by the City, or on its behalf, which is imposed on taxable transactions occurring within, on or with respect to the West Side Property.

D. The Parties are entering into this Agreement to set forth their current agreement and understanding with respect to matters described in provisions (a) and (b) in recital C above.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RidgeGate, RRMD#1 and the City hereby agree as follows:

## **AGREEMENT**

### **1. Definitions; General Provisions.**

(a) Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

"Agreement" means this RidgeGate West Side Agreement Regarding Dedication, Acceptance and Maintenance of Public Improvements and Sales Tax Sharing, including the exhibits attached hereto.

"Cabela's Incentive Agreement" means that certain agreement entered into on or about September \_\_\_\_\_, 2012, between the City and Cabela's, Inc., in which the City agrees to pay to Cabela's certain incentive payments for economic development purposes.

"District(s)" means RRMD#1 or any other special districts or other similar entities as designated from time to time by RidgeGate as provided in Section 8(h) below to receive the District Shared Sales Taxes, unless the context specifically indicates a lesser inclusive reference to districts.

"District Shared Sales Taxes" has the meaning given such term in Section 8(b) below.

"East Side Agreement" has the meaning given such term in Section 7 below.

"East Side Property" means the portion of the Property located east of I-25.

"Existing Street/Sidewalk Improvements" has the meaning given such term in Section 2 below.

"Future Street/Sidewalk Improvements" has the meaning given such term in Section 3 below.

"IGA Amendments" has the meaning given such term in Section 8 below.

"Library Agreement" means that certain agreement by and among the City, RRMD#1, the Douglas County Libraries, a library district ("Library District"), and Lincoln Commons South, Inc., a Delaware corporation ("LCS") dated as of [\_\_\_\_\_] in which LCS has agreed to convey to the City a parcel of land described as Lot 2, RidgeGate Section 15, Filing No. 21, 2<sup>nd</sup> Amendment, and consisting of 2.376 acres, which the parties have valued at approximately \$1.4 million, and which the City in turn intends to convey to the Library District ("New Library Property").

"Parties" means RidgeGate, RRMD#1, and the City, and "Party" means any of RidgeGate, RRMD#1, or the City.

"RidgeGate" means RidgeGate Investments, Inc., its successors and assigns.

"Upgrades" has the meaning given such term in Section 4 below.

"West Side Property" has the meaning given such term in Recital C above.

"West Side Sales Tax Rebate Payments" means the payment of the District Shared Sales Taxes to be made by the City pursuant to Section 8 below.

"West Side Shared Sales Taxes" has the meaning given such term in Section 8(b) below.

"West Side Sales Tax Sharing Period" has the meaning given such term in Section 8(b) below.

(b) Effective Date and Term. This Agreement shall be effective as of the date first set forth above and shall represent the valid, binding and legally enforceable obligation of each of the Parties until such time as each of the terms and conditions hereof has been performed in its entirety or until this Agreement is terminated by mutual written agreement of the Parties hereto. This Agreement shall terminate as to RidgeGate, and RidgeGate shall no longer have any rights or obligations pursuant to this Agreement, on December 31, 2032.

(c) Condition Precedent. The City's obligations hereunder shall not become effective and binding on the City until approval by City Council and execution of this Agreement and the Library Agreement. RRMD#1's obligations hereunder shall not become effective and binding on RRMD#1 until approval by the Board of Directors of RRMD#1 and execution of this Agreement and consent of the lenders of RRMD#1 that have an interest in the revenues under the 2001 Sales Tax Sharing Agreement.

**2. Acceptance of Existing Street/Sidewalk Improvements.** Concurrent with the execution of this Agreement, RRMD#1 hereby dedicates to the City and the City hereby accepts from RRMD#1 for perpetual ownership, repair, replacement, operation and maintenance, all streets, sidewalks, street and pedestrian lighting, safety protection and all appurtenant facilities identified in **Exhibit A** attached hereto and incorporated herein by this reference (collectively, the "Existing Street/Sidewalk Improvements"). The City hereby agrees to hereafter perform all maintenance and repair of the Existing Street/Sidewalk Improvements at the City's sole cost and expense in the same manner and to the same standards as the City maintains, repairs and replaces all other streets and sidewalks elsewhere in the City (except as provided in Section 4 below with regard to Upgrades), including without limitation:

(a) all street maintenance from back of curblin to back of curblin;

- (b) all street lighting maintenance and operation (including cost of electricity);
- (c) all sidewalk maintenance; and
- (d) all other standard City services for street maintenance, including snow removal for both streets and sidewalks.

The City accepts the Existing Street/Sidewalk Improvements in their current "AS IS" condition with all faults latent or patent, and agrees that neither RidgeGate nor RRMD#1 shall hereafter have any obligations of any kind to perform or pay for any operation, improvement, maintenance, repair or replacement of the Existing Street/Sidewalk Improvements.

**3. Future Street/Sidewalk Improvements.** The City agrees that it will hereafter accept all streets, sidewalks, street and pedestrian lighting, and all appurtenant facilities hereafter constructed or installed within the West Side Property (collectively, the "Future Street/Sidewalk Improvements") in accordance with the subdivision improvements standards and procedures adopted by the City at the time of such dedication. The Parties acknowledge that, as of the effective date of this Agreement, the City has adopted the Douglas County standards. Notwithstanding the foregoing, however, once streets to be dedicated to the City in the future pursuant to this Section 3 have been opened to the public for public use and access, the City agrees that it will accept responsibility for snow removal activities on such streets upon initial acceptance of same.

**4. Maintenance and Repair of Upgrades.** Notwithstanding the provisions of Section 2 above, if an improvement accepted by the City includes any of the components listed in **Exhibit B** attached hereto (collectively, "Upgrade(s)"), subject to the budget approval process described in this Section 4, RRMD#1 shall be responsible for any marginal cost of maintenance, repair or replacement of such Upgrades over and above the cost that would otherwise be incurred by the City if such Upgrades were not included (the "Marginal Cost"). The presence of such Upgrades in any accepted improvement shall be identified by RRMD#1 in writing during the acceptance process. To the extent the City determines to repair and/or replace one or more of the Upgrades, the City shall provide RRMD#1 with notice of the City's intent to repair or replace an Upgrade, including a preliminary budget of the Marginal Costs associated therewith to RRMD#1 no later than October 15 of the year prior to the year in which such repair or replacement is intended to occur ("Upgrade Notice"). RRMD#1 shall review the Upgrade Notice and determine in its sole discretion and no later than December 15 of the year of the request, whether RRMD#1 will participate in the Marginal Cost of the Upgrade. RRMD#1 shall notify the City no later than December 15 of the year in which the Upgrade Notice is received. If RRMD#1 determines to participate in the Marginal Cost of an Upgrade in accordance with an Upgrade Notice, it shall appropriate funds therefor in its budget for the following year. For example, if replacement of a paver crosswalk becomes necessary and RRMD#1 determines to participate in the Marginal Cost in accordance with the process described in this Section 4, RRMD#1 shall reimburse

the City for the Marginal Cost of installing new pavers, and the City shall replace the crosswalk with the same material as existed at the time of acceptance. If the City does not elect to provide an Upgrade Notice to RRMD#1 in accordance with this Section or if the City determines not to repair or replace the improvement(s) to the same standard as the Upgrade, the City may replace the Upgrade with the City's standard item or material.

**5. Maintenance of RRMD#1 Improvements.** The Parties acknowledge and agree that RRMD#1 has constructed and will construct certain public improvements authorized pursuant to its service plan that are not expected to be offered to the City for acceptance or dedicated to other governmental entities. RRMD#1 shall remain responsible for maintenance, operation, repair and replacement of all such public improvements constructed, retained and owned by RRMD#1. Such improvements may include but are not limited to certain park and recreation, drainage, and parking facilities. The Parties acknowledge and agree that it may be necessary to enter into license, easement or other similar arrangements with respect to the RRMD#1's maintenance, operation, repair or replacement of such improvements. The Parties agree to negotiate in good faith to enter into any such required agreements.

**6. Payments for Maintenance Costs.** In order to offset costs incurred by the City in connection with the City's maintenance and operation of improvements likely to be accepted by the City during the years 2015 through 2019, RRMD#1 shall, subject to annual appropriation, make five annual payments of \$250,000 each on or before July 1 of each such five years. If, in any year during the years 2015 through 2019, RRMD#1 fails to appropriate such amounts or appropriates less than the full amount due and owing pursuant to this Section 6, RRMD#1 agrees that such amount shall accrue and be added to the amounts due and owing in subsequent years, and shall bear interest at the rate of six percent (6%) per annum from the date due until paid.

**7. Amendments to Intergovernmental Agreements.** The Parties acknowledge that, simultaneously with the execution of the East Side Agreement, the City and each of Rampart Range Metropolitan District Nos. 2 and 7 ("District Nos. 2 and 7") are anticipated to enter into amendments to their respective Intergovernmental Agreements with the City dated September 18, 2005 ("City IGAs") whereby District Nos. 2 and 7 shall, commencing in the tax collection year 2024, impose an additional operational mill levy in the amount of one (1) mill. Subject to annual appropriation, the revenues generated from such one (1) mill levy shall be paid to the City and used by the City for the maintenance and repair of the Existing Street/Sidewalk Improvements and Future Street/Sidewalk Improvements, subject to all the terms, limitations and conditions set forth in such amendments (the "IGA Amendments"). If RRMD#1 fails to appropriate such amounts in any given year, or appropriates less than the full amount due and owing pursuant to this Section 7, RRMD#1 agrees that such amount shall accrue and be added to the amounts due and owing in subsequent years, and shall bear interest at the rate of six percent (6%) per annum from the date due until paid.

**8. Sales Tax Sharing.**

(a) 2001 Sales Tax Sharing Agreement, Sales Tax Rebate Revenues and Outstanding RRMD#1 Obligations. The Parties recognize and agree that, pursuant to correspondence dated October 9, 2012, RidgeGate exercised its right to commence payment of the Sales Tax Rebate Revenues (defined in the 2001 Sales Tax Sharing Agreement) pursuant to the terms of the 2001 Sales Tax Sharing Agreement effective as of January 1, 2013 (“Trigger Notice”). Pursuant to the Trigger Notice, RidgeGate directed all Sales Tax Rebate Revenues to be paid to RRMD#1 as a result of RRMD#1’s pledge of such revenues to its then outstanding Tax Supported Refunding Revenue Note, Series 2012 issued in the original principal amount of \$70,000,000 (the “2012 Loan”). RRMD#1 has since refunded the 2012 Loan and issued additional debt in the form of its Tax Supported Refunding Revenue Note, Series 2013A issued in the original principal amount of \$50,000,000 and its Tax Supported Refunding Revenue Note, Series 2013B issued in the original principal amount of \$70,000,000 (as amended or modified from time to time, the “Outstanding Debt”). The repayment of the Outstanding Debt was secured, in part, by a pledge of the Sales Tax Rebate Revenues under the 2001 Sales Tax Sharing Agreement. The lender of the Outstanding Debt has agreed that a pledge of the District Shared Sales Taxes that RRMD#1 will be entitled to receive under this Agreement shall be substituted in place of the prior pledge of the Sales Tax Rebate Revenues under the 2001 Sales Tax Sharing Agreement. Accordingly, RidgeGate hereby directs the City to pay all District Shared Sales Taxes due hereunder to RRMD#1 until otherwise directed by RidgeGate.

(b) Sharing of West Side Sales Taxes. During the period commencing on January 1, 2014 and ending on December 31, 2032 (the “West Side Tax Sharing Period”), all sales tax, lodging tax, admissions tax or use tax collected by the City, or on its behalf, on taxable transactions occurring within, or the taxable exercise of any privilege on or with respect to activities occurring within the West Side Property or any portion thereof, without any deduction whatsoever other than the deduction of all amounts that the City is required to rebate to Cabela's Wholesale, Inc. (“Cabela's”) pursuant to the existing Cabela’s Incentive Agreement and Cabela’s MOU (collectively, the “West Side Shared Sales Taxes”) shall be shared between the City and the District as provided in this Section 8. The City shall pay the following portions of the West Side Shared Sales Taxes to the District (such portions to be paid to the District being referred to herein as the “District Shared Sales Taxes”):

(i) During the period commencing on January 1, 2014 and ending on December 31, 2018, the District shall receive forty-five percent (45%) of the West Side Shared Sales Taxes; and

(ii) During the period commencing on January 1, 2019 and ending on December 31, 2023, the District shall receive twenty-five percent (25%) of the West Side Shared Sales Taxes; and

(iii) During the period commencing on January 1, 2024 and ending on December 31, 2028, the District shall receive fifteen percent (15%) of the West Side Shared Sales Taxes; and

(iv) During the period commencing on January 1, 2029 and ending on December 31, 2032, the District shall receive ten percent (10%) of the West Side Shared Sales Taxes.

(c) Not later than July 31, 2015, the City shall complete payment of District Shared Sales Taxes for the fiscal year 2014, together with payment for the first calendar quarter of 2015 and shall remit a Shared Sales Tax Report (defined below) for each such payment. Thereafter, the City shall make payment to RRMD#1 of the District Shared Sales Taxes collected in each calendar quarter within sixty (60) days after the end of each calendar quarter. Any such amount not paid when due shall bear interest at the rate of six percent (6%) per annum from the date due until paid.

(d) The City hereby forever waives and relinquishes any claim arising prior to, or relating to any period prior to, the effective date of this Agreement that the City may have with regard to any amounts owing to the City from either RRMD#1 or RidgeGate under the Annexation Agreement and/or the 2001 Sales Tax Sharing Agreement, including, without limitation, the disputed "Shortfall" for 2011.

(e) During the West Side Sales Tax Sharing Period, the City agrees to account for all of the West Side Shared Sales Taxes in a manner which will enable the Parties to determine that the West Side Shared Sales Taxes have been properly allocated.

(f) The City will diligently enforce the collection of the West Side Shared Sales Taxes no less diligently than elsewhere in the City. RidgeGate and RRMD#1 acknowledge the sales tax returns filed by individual retailers are confidential, and RidgeGate and RRMD#1 agree not to request such returns or other information which could reasonably lead to the identification of sales taxes collected by any individual retailer within the City whether informally or by any open records act request authorized by state or federal law. Provided, however, with each quarterly payment pursuant to subsection (c) above, the City shall deliver to RidgeGate and the District a "Shared Sales Tax Report" including statistical and accounting reports of all West Side Shared Sales Taxes received by the City in such fiscal year, and, if authorized by Cabela's in writing to the City, any deductions for sales tax rebates paid to Cabela's pursuant to the Cabela's Incentive Agreement and/or Cabela's MOU which have been used by the City in determining the amount of the West Side Shared Sales Taxes being rebated to the District and a copy of all checks paid by the City to Cabela's pursuant to the Cabela's Incentive Agreement. RidgeGate and the District shall each have the right to audit the City's computation of the District Shared Sales Taxes and West Side Shared Sales Taxes. Except in the case of contests for which RidgeGate or the District has alleged a default pursuant to the terms of this Agreement, audits shall not occur more than once annually and only at the time the City subjects its records to audits required by state law. All costs incurred by the City in connection with preparation of the Shared Sales Tax Report shall be borne by the City; provided, however that any such reasonable

costs incurred by the City in connection with any audit requested or required by RidgeGate or the District, shall be borne by RidgeGate or the District, unless such audit determines that the actual amount of West Side Shared Sales Taxes or District Shared Sales Taxes for any period exceeds the amounts stated in any Shared Sales Tax Report by the City for such period by more than five percent (5%), in which event such costs shall be borne by the City. Payment of the District Shared Sales Taxes shall continue and shall not be impeded during the period of time any audit or review is underway pursuant to this section.

(g) The West Side Sales Tax Rebate Payments shall be made subject to the express conditions and limitations set forth in this subsection (g). All West Side Sales Tax Rebate Payments hereunder shall be expressly subject to annual appropriation by the City; provided, however, that it is the present intent and expectation of the Parties that the City will in fact make all of the payments contemplated by this Agreement. None of the obligations of the City hereunder to RidgeGate, or to any other person or entity, shall be required to be paid from any source other than the West Side Shared Sales Taxes.

(h) Upon the expiration, release or satisfaction of the existing pledge of the District Shared Sales Taxes as security for the repayment of the Outstanding Debt, RidgeGate, in its sole discretion, may designate another entity to which the District Shared Sales Taxes may be directed. Any entity designated to receive District Shared Sales Taxes must be an entity with the responsibility for financing, constructing, owning, operating or maintaining public improvements within the Property for the benefit of the public and the residents of the Property. Any such designation must be made prior to completion of a calendar quarter and in writing to the City.

(i) The Parties each agree that they shall not, subsequent to the date of this Agreement, enter into any agreement in which such Party pledges payment to another party the revenues promised to the other Party in this Agreement.

**9. Appropriation.** Pursuant to Section 29-1-110, C.R.S., any financial obligations of RRMD#1 contained herein, and the obligations of Districts Nos. 2 and 7 under the amendments referenced in Section 8 above, that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available on an annual basis; provided, however, that it is the present intent and expectation of the Parties that RRMD#1 will in fact make all of the payments contemplated by this Agreement. RRMD#1 hereby represents that it intends to appropriate the amounts payable under this Agreement to the fullest extent permitted by law. In the event of a failure by RRMD#1 to appropriate, the additional provisions set forth in Section 6 and Section 7 shall apply.

**10. Miscellaneous Provisions.**

(a) Relationship of Parties. This Agreement does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee

among the Parties. No Party shall, with respect to an activity, be considered as agent or employee of any other Party.

(b) Amendment. This Agreement may be modified, amended, changed or terminated, except as otherwise provided herein, in whole or in part, only by agreement in writing duly authorized and executed by each of the Parties.

(c) Entire Agreement. Except as specifically set forth herein, this Agreement contains the entire agreement among the Parties and no statement, promise or inducement made by any Party or the agent of any Party that is not contained in this Agreement shall be valid or binding.

(d) Third Party Challenges. In the event of any legal challenge by a third party to the validity or enforceability of any provision of this Agreement, the Parties agree to cooperate in the defense of such challenge and to bear their own costs and attorneys' fees. During the pendency of any such legal challenge, the Parties agree to abide by and carry out all of the terms of this Agreement, unless otherwise ordered by a court of competent jurisdiction.

(e) Severability. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.

(f) Applicable Law. This Agreement shall be enforceable according to the laws of the State of Colorado.

(g) Best Efforts. Each Party shall use its best efforts and shall cooperate with regard to any other action as may be reasonably required to effectuate the intention of this Agreement.

(h) Notices. Any notice, request, demand, consent, approval or other communication required or permitted under this Agreement (collectively, "Notices") shall be in writing and shall be addressed to the Parties as set forth below. Notices shall be (a) delivered by courier service, in which case they shall be deemed delivered on the first business day after deposit thereof with the courier service, (b) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three (3) days after deposit in the United States mail, (c) transmitted by facsimile transmission, in which case they shall be deemed delivered when delivery has been electronically confirmed by the recipient's facsimile machine, as evidenced by the written confirmation produced by the sender's facsimile machine, or (d) by personal delivery, in which case they shall be deemed delivered when so delivered. Any Party may change its address, its facsimile machine number, or the name and address of its attorneys by giving at least five (5) days advance Notice thereof in compliance with this Section. The addresses and facsimile machine numbers of the Parties are:

**To the City of Lone Tree:** City of Lone Tree  
9220 Kimmer Dr.

Lone Tree, CO 80124  
Attn: Seth Hoffman

**with a copy to:** White, Bear & Ankele Professional Corporation  
2154 E. Commons Ave., Suite 2000 Centennial,  
CO 80122  
Attn: Gary White

**To RidgeGate Investments,  
Inc.** c/o Coventry Development Corporation  
1041 Third Avenue, 2nd Floor  
New York, New York 10065  
Attn: Robert Asselbergs

**with a copy to:** RidgeGate Investments, Inc.  
c/o Coventry Development Corporation  
10270 Commonwealth Street, Suite B  
Lone Tree, Colorado 80124  
Attn: Keith Simon

**and to:** Robinson Waters & O'Dorisio, P.C.  
1099 18th Street, Suite 2600  
Denver, Colorado 80202  
Attn: Paul Timmins

**To Rampart Range  
Metropolitan District No. 1** CliftonLarsonAllen LLP  
8390 E. Crescent Parkway, Suite 600  
Greenwood Village, CO 80111-2811  
Attn: Denise Denslow

**with a copy to:** McGeady Sisneros, PC  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, Colorado 80203  
Attn: Megan Becher

(i) TABOR. If any provision hereof is declared void or unenforceable due to a purported violation of Article X, Section 20 of the Colorado Constitution, the City or the RRMD#1, as appropriate, shall take all such action as may be necessary to cure such violation, including, but not limited to, acquiring voter approvals, either in advance of, or following the purported violation, as may be allowed by law.

(j) Time is of the Essence. Time is of the essence hereof; provided however, that if the last day permitted or the date otherwise determined for the performance of any act required or permitted under this Agreement falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding business day, unless otherwise expressly stated.

(k) Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any legal person other than the Parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties.

(l) Litigation Costs; Attorneys Fees. In the event of any litigation between the Parties hereto concerning the subject matter hereof, the prevailing Party(ies) in such litigation shall be entitled to receive from the non-prevailing Party(ies), in addition to the amount of any judgment or other award entered therein, all reasonable costs and expenses, including attorney fees, incurred by the prevailing Party in such litigation.

(m) Compliance with Law. The Parties agree to comply with all valid federal, state and local laws, rules and regulations which are now, or in the future may become applicable to the Parties, to their business or operations, or to services required to be provided by this Agreement that are not inconsistent with this Agreement.

(n) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of with together shall constitute one and the same document.

EXECUTED as of the date first set forth above.

RIDGEGATE INVESTMENTS, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Robert Asselbergs, President

RAMPART RANGE METROPOLITAN  
DISTRICT NO. 1

By: \_\_\_\_\_  
Keith D. Simon, President

ATTEST:

\_\_\_\_\_

Secretary

CITY OF LONE TREE, COLORADO

By: \_\_\_\_\_  
James D. Gunning, Mayor

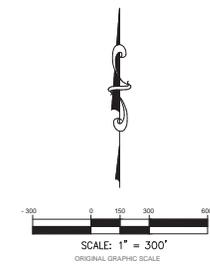
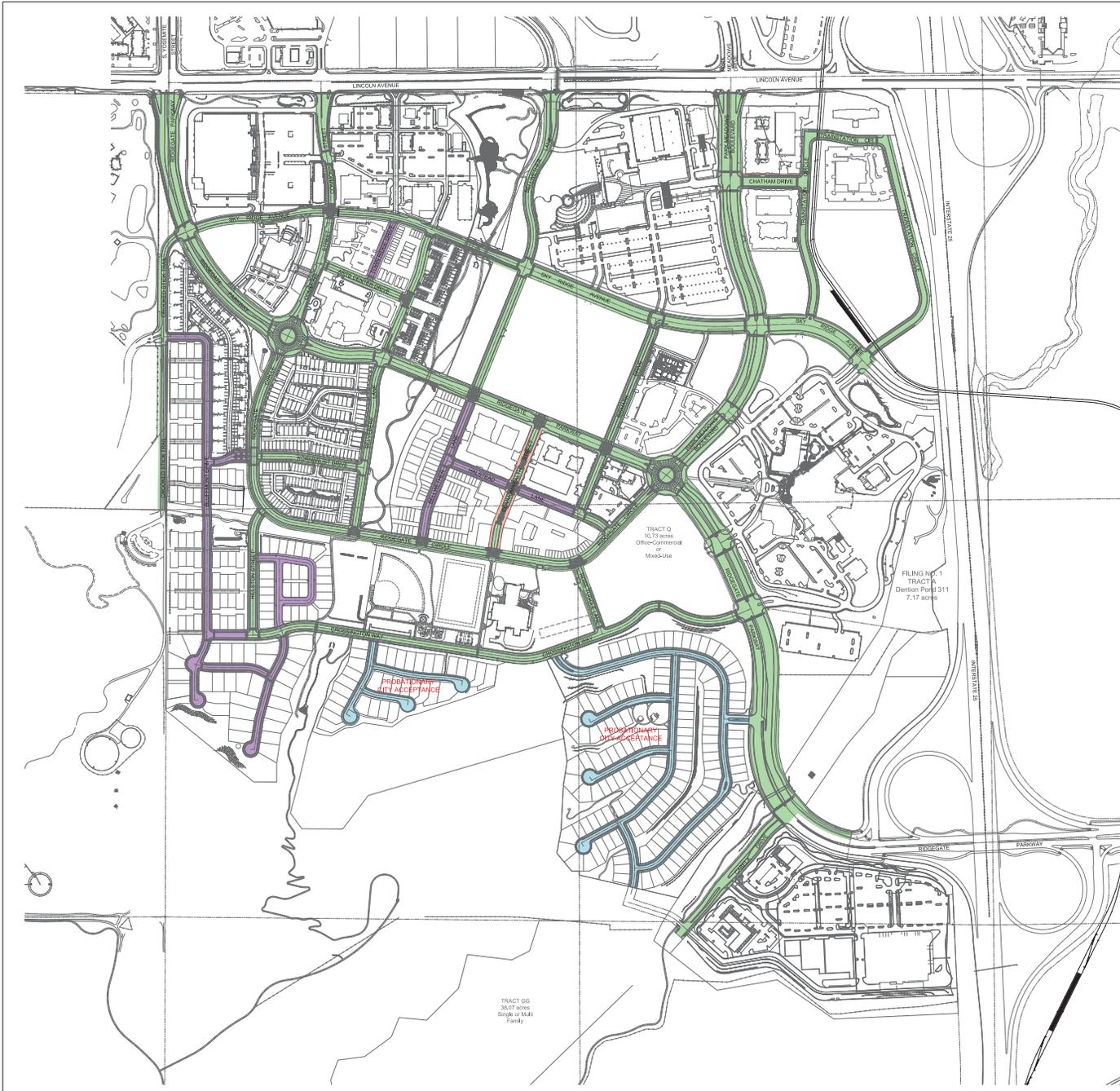
ATTEST:

\_\_\_\_\_  
City Clerk

**EXHIBIT A**

**Existing Street/Sidewalk Improvements**

**[see attached]**



**LEGEND:**

- CITY OF LONE TREE - STREETS (PREVIOUSLY ACCEPTED BY THE CITY)
- RAMPART RANGE METRO DISTRICT - STREETS (ACCEPTED WITH THIS AGREEMENT)
- DEVELOPER - STREETS (IN ACCEPTANCE PROCESS WITH CITY)
- RAMPART RANGE METRO DISTRICT - PERMANENT RESPONSIBILITY

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DATE:	09/30/14
DESIGN BY:	MERRICK 09/29/14
DRAWN BY:	MERRICK 09/29/14
CHECKED BY:	JAYNE 09/29/14
APPROVED BY:	JAYNE 09/29/14

**RAMPART RANGE METRO DISTRICT  
WEST VILLAGE  
STREET MAINTENANCE  
EXHIBIT**

JOB NO:	65118314
DATE:	09/30/14
SHEET	01 of 02

**EXHIBIT B**

**Upgrades**

**[to be inserted]**



**LEGEND:**

-  STREET - CONCRETE IMPROVEMENTS
-  STREET - PAVER IMPROVEMENTS
-  MEDIAN IMPROVEMENTS



RIDGEGATE - SECTION 15  
 UPGRADED STREET IMPROVEMENTS  
 EXHIBIT

DATE: 10/07/14  
 SHEET: 1 OF 1

## AMENDMENT TO SALES TAX SHARING AGREEMENT

This Amendment (this "Amendment") is entered into effective as of January 1, 2015 between RIDGEGATE INVESTMENTS, INC., a Delaware corporation ("RidgeGate"), and the CITY OF LONE TREE, a home rule municipal corporation and political subdivision of the State of Colorado (the "City").

### Recitals

A. The City and RidgeGate (as assignee of Colony Investments, Inc.) are parties to that certain Sales Tax Sharing Agreement recorded in the real property records of Douglas County, Colorado on October 1, 2000 in Book 2155 at Page 1369 (as modified by that certain Memorandum of Understanding dated May 1, 2012 among RidgeGate, the City and the District, the "STSA"). Capitalized terms used herein and not defined shall have the meanings given such terms in the STSA.

B. Simultaneously with the execution of this Amendment, RidgeGate, the City and Rampart Range Metropolitan District No. 1 (the "District") are entering into an agreement (the "West Side Agreement") regarding dedication, acceptance and maintenance of public improvements on the portion of the Property located on the west side of I-25 (the "West Side Property"), and the sharing of Sales Tax revenues generated from transactions occurring within, and the taxable exercise of any privilege on or with respect to, the West Side Property.

C. In connection therewith, RidgeGate and the City desire to exclude the West Side Property from the provisions of the STSA, so that the STSA shall hereafter apply only to the portion of the Property located on the east side of I-25 (the "East Side Property").

### Amendment

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

1. Amendment. Subject to Section 2 below, the last Recital and all of Sections I, II and III of the STSA are hereby amended by substituting the words "East Side Property" in place of the word "Property" in each instance where the latter appears therein, and the addresses for notices to RidgeGate in Section 3(H) of the STSA are amended to read as follows:.

To RidgeGate:: RidgeGate Investments, Inc.  
c/o Coventry Development Corporation  
1041 Third Avenue, 2<sup>nd</sup> Floor  
New York, New York 10065  
Attn: Robert Asselbergs

with a copy to: RidgeGate Investments, Inc.  
c/o Coventry Development Corporation  
10270 Commonwealth Street, Suite B  
Lone Tree, Colorado 80124  
Attn: Keith Simon

with a copy to: Robinson Waters & O'Dorisio, P.C.  
1099 18th Street, Suite 2600  
Denver, Colorado 80202  
Attn: Paul Timmins

2. Except as specifically amended hereby, the STSA is not altered or amended, and it remains in full force and effect.

EXECUTED as of the date first set forth above.

RIDGEGATE INVESTMENTS, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Robert Asselbergs, President

CITY OF LONE TREE, COLORADO,

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk



# Annexation History

City of Lone Tree  
Douglas County, Colorado

August 2013

