

RESOLUTION NO. 1564

**A RESOLUTION OF THE GOLDEN CITY COUNCIL APPROVING  
A LEASE PURCHASE AGREEMENT FOR CERTAIN PROPERTY  
AT 20041 GOLDEN GATE CANYON ROAD WITH LANCE AND  
JOANN KILGROE**

WHEREAS, the City of Golden City Council has identified the need to construct a new City shops facility to house functions including Street Maintenance, Fleet Maintenance, Utilities, and Parks and Open Space maintenance; and

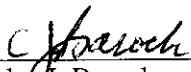
WHEREAS, after a detailed investigation and evaluation, City Council supports the City manager's determination that the most suitable available location for such City shops facility is the 29 acre parcel at 20041 Golden Gate Canyon Road owned by Lance and JoAnn Kilgroe; and

WHEREAS, City Council has determined that it is appropriate to secure an ownership right in the property now, in order to continue planning for the shops facility.

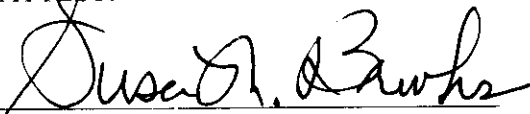
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

The Lease Purchase Agreement between the City and Lance and JoAnn Kilgroe is approved in essentially the same form as the copy of such agreement accompanying this resolution, subject to modifications of paragraph 5 as discussed regarding the date of possession, and also subject to removal of the language pertaining to taking title subject to the provisions of the easement recorded January 18, 2005, such language to be replaced with a simple requirement to build a road by January 10, 2006. All such changes and the Agreement to be in a form satisfactory to the City Attorney. The Mayor is authorized to execute the Agreement on behalf of the City.

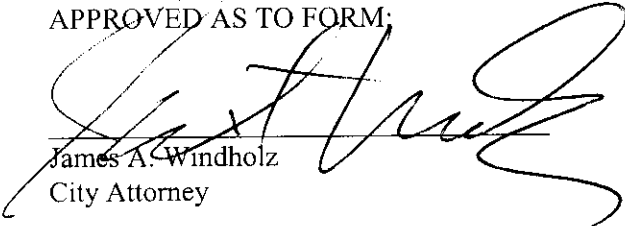
Adopted the 28th day of April, 2005.

  
\_\_\_\_\_  
Charles J. Baroch  
Mayor

ATTEST:

  
\_\_\_\_\_  
Susan M. Brooks, MMC  
City Clerk

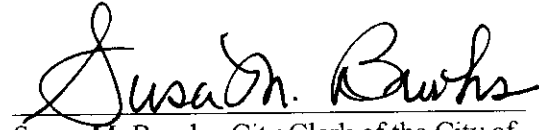
APPROVED AS TO FORM:

  
\_\_\_\_\_  
James A. Windholz  
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 28th day of April, A.D., 2005.

(SEAL)

ATTEST:

  
Susan M. Brooks, City Clerk of the City of  
Golden, Colorado

Res 1564

**WINDHOLZ & ASSOCIATES**  
ATTORNEYS AT LAW

1650 38<sup>TH</sup> STREET  
SUITE 103 WEST  
BOULDER, COLORADO 80301


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James A. Windholz, P.C.  
David S. Williamson  
William P. Hayashi

TELEPHONE: 303-443-3100  
FACSIMILE: 303-443-7835

**MEMORANDUM**

**TO:** Susan Brooks

**FROM:**  Dave Williamson

**DATE:** August 2, 2005

**RE:** CONVEYANCE DOCUMENTS/KILGROE PARCEL

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Attached please find copies of fully executed and recorded "Lease/Option to Purchase Agreement", and "First Amendment to Easement and License Agreement". These contracts relate to the City's lease and option to purchase property for the City shops on the north side of town.

The original of the documents have been retained by the Kilgroe's attorney. They have been recorded and recording information is as shown on the attached copies. You should retain these copies in your files as you would other original contracts and documents of conveyance.

Please let me know if you have any questions.

DSW/dr

c: Steve Glueck w/enc.  
Mike Bestor w/enc.



R \$61.00

D \$0.00

2005025344

LEASE

06/01/2005 07:44:39 AM 12 Page(s)

Jefferson County, Colorado

2

### LEASE/OPTION TO PURCHASE AGREEMENT

Effective MAY 19<sup>TH</sup>, 2005, the City of Golden, Colorado ("City"), a Colorado home-rule municipal corporation and Jo Ann Kilgroe and Lance H. Kilgroe (collectively, "Kilgroe"), have entered into this Agreement regarding a parcel of real estate approximately 29.27 acres in size situate in the County of Jefferson, State of Colorado and described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

6/100

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1. Lease. Subject to and upon the terms, provisions and conditions hereinafter set forth, and in consideration of the duties, covenants and obligations hereunder, Kilgroe does hereby lease, demise and let unto the City and the City does hereby lease from Kilgroe the Property.

2. Term. This lease shall begin on May 23, 2005 and shall terminate on January 29, 2017. The lease is subject to annual appropriations of the lease payments by the City (see Section 4 below).

3. Lease Rates. Upon execution hereof, City shall pay to Kilgroe the sum of \$600,000.00. Thereafter, the City shall make annual lease payments as follows: the annual lease payment for calendar years 2006 through 2016, inclusive, shall be as set forth in Exhibit B attached hereto. Annual lease payments shall be due on the 30<sup>th</sup> day of January of each year during the term of the lease, and any payment not made in a timely fashion shall accrue additional interest (in addition to the rate set forth in Exhibit "B") of 8% per annum from its original due date until such payment is made in full. A portion of each annual lease payment is paid as, and represents, payments of interest, and the balance as principal for purposes of calculating the option purchase price as provided in paragraph 8. Exhibit "B" attached hereto sets forth the interest and principal component of each annual lease payment. The City will be responsible for payment of real property taxes, if any, for the Property during the entire term of this lease.

4. Conditions of Lease Payments - Continuation/Termination. The City is not obligated by this Agreement to make any payments in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof or to make payments from any funds of the City other than funds appropriated for the payment of current expenditures. All payment obligations of the City under this Agreement are from year to year only and do not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the City.

Subject to the notification and right to supplement appropriation provisions below, the lease will terminate without penalty to the City upon the occurrence of an event of non-appropriation in any calendar year. In such event, all obligations of the City under the lease will terminate. If there appears to be an event of non-appropriation that would terminate this lease in any particular calendar year, Kilgroe will send a notice to the City requesting confirmation of non-appropriation and termination. Upon receipt of such notification, the City will either 1)

1

CLIENT COPY - PLEASE REVIEW  
AND RETAIN FOR YOUR RECORDS  
Mailed 6/29 By RJB  
TOUSSAINT, NEMER & COATY, P.C.

provide Kilgroe with written confirmation of the non-appropriation and resulting termination, 2) provide documentation that the necessary appropriation did in fact occur, or 3) within sixty 60 days of such notice adopt a supplemental appropriation, which supplemental appropriation will avoid termination of the lease. Notwithstanding anything herein to the contrary, the failure of the City to make any lease payment, including additional interest, if applicable, within sixty (60) days after a written demand for payment shall be deemed an event of default which entitles Kilgroe to terminate the lease.

The City and Kilgroe acknowledge and agree that the lease payments hereunder shall constitute current expenditures of the City payable in the fiscal years for which funds are appropriated for the payment thereof. The City's obligations under this Agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the City, or an obligation of the City payable in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof, or payable from any funds of the City other than funds appropriated for the payment of current expenditures. The City shall not be required or obligated to exercise its option to purchase the Property. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of City monies, assets or properties.

*J*

5. Possession.

A. *Possession of Portion of Property.* Provided payment as required herein has been made and the City otherwise has complied with the terms and provisions hereof, possession of that portion of the Property described in Exhibit "C" attached hereto and incorporated herein by this reference shall be delivered to the City on upon execution of this lease by both parties. Additionally, the City acknowledges that Kilgroe will be unable to remove all of its equipment and other items from the Property prior to the date of delivery of possession and agrees that Kilgroe shall retain the right to enter upon the Property to remove the same for a period of sixty days after delivery of possession.

B. *Possession of Entire Property.* Possession of the entire Property shall be delivered to the City on or before January 1, 2006.

6. City's Obligation to Construct Public Road. The parties acknowledge that by Easement and License Agreement recorded December 21, 2004 at Reception No. F2147201 and Easement and License Agreement recorded December 10, 2004, at Reception No. F2142242, and Restated Easement and License Agreement recorded January 18, 2005 at Reception No. F2159760, all in the records of the Clerk and Recorder for the County of Jefferson, State of Colorado and unrecorded First Amendment to Easement and License Agreement dated May 11, 2005 (collectively the "Roadway Agreement"), Brickyard Holdings LLC ("Brickyard") did acquire easement license rights with respect to the Property and Kilgroe related entities did agree to construct a road as described therein to connect Brickyard's property to Golden Gate Road. The parties acknowledge that the Agreements are currently in effect and also of the terms under which the Agreements will be terminated, namely that a public road extending from Pine Ridge Road to Golden Gate Canyon Road be constructed in a timely fashion as set forth in the aforementioned First Amendment to Easement and License Agreement. On or before January 10,

2006, or such later date corresponding to the time for completion as extended pursuant to the Roadway Agreement, the City shall complete construction of a public road, generally aligning with the east entrance to the proposed Canyon View Filing No. 3 Subdivision on Pine Ridge Road as shown on the Preliminary Plat currently before the City and extending south across the Property to Golden Gate Canyon Road (the "Public Road"). This obligation shall be considered a material obligation under this Agreement. Kilgroe shall not modify its rights or obligations regarding the roadway, specifically including termination of the easement and license as set forth in the Agreement, from those set forth in the Roadway Agreement without the prior written consent from the City. So long as the City completes construction of the Public Road in a timely fashion, Kilgroe shall dedicate a fifty-foot-wide strip of land upon which the Public Road is located to the City for no additional consideration. Termination of this Agreement will not effect this dedication.

3

7. Use/Quiet Enjoyment. From and after the date of delivery and possession and provided that the City pays the Lease payments herein required and performs all of the covenants and agreements herein contained, the City shall and may peacefully have, hold, enjoy and use the Property for any lawful purpose.

8. Option to Purchase the Property. At any time during the term of the Lease, and so long as the City has paid all Lease payments herein required and performed all of the covenants and agreements herein contained, the City may purchase the Property by making payment to Kilgroe of the sum of \$3,935,000.00 less the sum of all principal payments (including the down payment) previously paid, with adjustment for prepaid interest, if any, from the date of the last lease payment to the date of purchase. For purposes of this adjustment, interest shall be calculated at the rate of 0% per annum during 2005, at 3% per annum during 2006, 2007, and 2008, and at 4% per annum during 2009 and during the entire remaining term of the Lease. Additionally, so long as the City has paid all Lease payments as provided by this Agreement, then the City may purchase the property by payment to Kilgroe of the sum of \$1.00. Such final payment shall be made prior to the date of termination of the Lease.

A. *Notice to Purchase/Merchantable Title.* The option to purchase the Property as provided herein shall be exercised by written notice from the City to Kilgroe during the term of the lease. In the event that Kilgroe has not received the City's notice advising of the exercise of its option to purchase the Property by December 15, 2016, then Kilgroe shall provide a written notice to the City inquiring as to whether the City intends to exercise its option to purchase. Failure of Kilgroe to so notify the City as required in this sub-paragraph shall extend the period during which the City may exercise its option to purchase through the calendar year 2017. Upon such notice, the title insurance policy provided for in section 10 below shall be updated to the date of closing. Closing shall take place within thirty days of the date of any notice from the City to Kilgroe. In the event said updated commitment indicates rights of parties first arising after the date of execution of this Agreement as a result of action or non-action on Kilgroe's part and Kilgroe is unable or unwilling to remove such liens or otherwise render the title acceptable to the City within thirty days after receipt of written notice from the City detailing the specific title items deemed unacceptable to it, then the City may, at its option, terminate this Agreement, or satisfy such liens, restrictions, encumbrances, or other unacceptable title conditions shown in

the updated commitment to effect good and merchantable title, and deduct from the amount to be paid to Kilgroe the amount of any consideration paid on the account thereof or charge to Kilgroe, if there are insufficient funds otherwise due Kilgroe.

B. *Lease Termination without Purchase.* If the option to purchase is not exercised, possession of the Property, except any portion not previously dedicated, shall be returned to Kilgroe upon termination of the Lease term in substantially the same condition as the Property was in at the commencement of the Lease, all at the sole expense of the City.

4

9. Exclusions. The parties agree that the following items are not included in this transaction and shall be removed from the Property by Kilgroe prior to January 1, 2006: sub-zero refrigerator and stained glass windows.

10. Title Insurance - Due Diligence.

A. *Title Insurance.* To assure the City of good and merchantable title to the Property for purposes of lease, potential purchase, and the contemplated improvements to be made to the Property by the City, Kilgroe has obtained and delivered to the City a commitment dated April 14, 2005 for a title insurance policy in the amount of \$3,935,000.00 issued by First American Heritage Title Insurance Company, and the City accepts the condition of the title as reflected in said commitment, subject, however, to the unrecorded First Amendment to Easement and License Agreement dated May 11, 2005 that is a part of the Roadway Agreement. Kilgroe shall pay for the title insurance policy in said amount, which policy shall be issued effective as of the date of execution of this lease by both parties.

B. *Survey.* Kilgroe has obtained and delivered to the City a survey of the Property and a copy of the Phase I environmental audit of the Property previously obtained by Kilgroe. The City accepts the terms of said documents.

C. *Inspections.* The City acknowledges that it previously has inspected the Property and waives any rights it may have to further inspection or to terminate this Agreement based upon items which were or reasonably could have been discovered by inspection of the Property.

D. *Matters Not Shown by the Public Records.* Kilgroe has delivered to the City true copies of all lease(s) and survey(s) in Kilgroe's possession pertaining to the Property and disclosed to the City all easements, liens or other title matters not shown by the public records of which Kilgroe has actual knowledge. The City has had the right to inspect the Property to determine if any third party(s) has any right in the Property not shown by the public records (such as, by illustration, an unrecorded easement, unrecorded lease, or boundary line discrepancy). The City makes no objection to any of the foregoing items or information.

11. Prorations. Personal property taxes, if any, and general real estate taxes for 2005 based on the most recent mill levy and most recent assessment shall be prorated to the date of commencement of the within Lease and the City shall be responsible for the payment of all taxes in connection with the Property from said date forward. Water and sewer charges shall be

prorated to the date possession of the Property is delivered to the City. These prorations shall be final.

12. Payment of Encumbrances - Taxes. All encumbrances and taxes required to be paid shall be paid by Kilgroe on or before the date of commencement of the within Lease from the proceeds of this transaction or from any other source. Kilgroe shall verify payment of same in writing to the City within 10 days of such payment.

13. Warranty Deed. At any closing provided for in this Agreement, Kilgroe shall execute and deliver to the City a good and sufficient General Warranty Deed conveying good and merchantable fee simple title to the respective parcel(s) to the City, free and clear of all liens, encumbrances, restrictions and taxes, excepting only those liens, restrictions and taxes to which the Property or any portion thereof may be subject as the result of any action or inaction by the City, those items listed as exceptions on the Title Commitment; provided however the Roadway Agreement shall not be deemed an accepted exception so long as the City has filed its Affidavit of completion of the Public Road.

14. Risk of Loss. Risk of loss or damage to the Property from any cause, including but not limited to fire, vandalism, or acts of nature shall remain with Kilgroe until the possession of the Property is delivered to the City. If, prior to said date, the Property is destroyed or damaged in whole or in part, this Agreement may be canceled at the option of the City or the City, at its option, shall have the right to proceed with specific performance of this Agreement despite such damage, provided that the City shall be entitled to any insurance proceeds resulting from such damage. From and after the date possession of the Property is delivered to the City, all risk of loss or damage to the Property from any cause, including but not limited to fire, vandalism, or acts of nature shall be and remain with the City, and the City shall repair any such damage as may occur to the Property or improvements thereon prior to the termination of this Lease. Further, the City shall not undertake to remove any improvements on the Property prior to its purchase of the Property.

15. Representations, Covenants and Warranties of Kilgroe. Kilgroe represents, covenants, and warrants the following to the City:

A. Kilgroe has not received any notice of, and has no other knowledge or information of, any action, suit, proceeding, or claim affecting the Property or any portion thereof, pending or threatened in any court or by or before any federal statute, county or municipal department, commission, board, bureau, agency or other governmental instrumentality, excepting only such proceedings as now or may in the future be before the City in connection with the Property.

B. The Property is free and clear of all mechanics' liens, and no work has been performed or is in process on the Property, and no materials have been furnished to the Property or any portion thereof which might result in mechanics', material men's or any other liens against the Property or any portion thereof.

C. As of the date of execution of this Agreement, Kilgroe shall be the sole



owner of good and marketable fee simple title to the Property and the Property shall be free and clear of all liens, claims, encumbrances and claims of third parties, unless consented to by the City in writing.

D. Except as herein allowed, during the term of this Agreement, Kilgroe shall not, nor shall it allow, effect or permit any transaction which may affect the quiet enjoyment of the Property by the City or which does or may adversely affect its good and marketable fee simple title to the Property.

E. During the term of this Agreement, Kilgroe shall not pledge, mortgage, sell, lease, transfer, exchange or convey any interest of any nature whatsoever in the Property to any other party.

F. To Kilgroe's actual knowledge (i) no leak, discharge or other contamination of the Property by a Hazardous Substance (defined below) has occurred on the Property; (ii) the Property is free of underground storage tanks as defined by Section 8-20-501 (11), C.R.S., as amended, or any successor or applicable statute; and (iii) any handling, transportation, storage, treatment or usage of Hazardous Substance that has occurred on the Property has been in compliance with all applicable federal, state, and local laws, regulations and ordinances. "Hazardous Substance" shall mean any hazardous or toxic substances or materials as defined by the Federal Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the regulations promulgated from time to time thereunder, environmental laws administered by the Environmental Protection Agency and laws of the State of Colorado or the City.

16. Indemnifications and Hold Harmless. Kilgroe shall indemnify, defend and hold the City harmless from any liability, obligation, cost or judgment incurred by the City, related to this Agreement resulting from any negligent or intentional acts of Kilgroe or breach of any representations, covenants or warranties. The City within its legal ability to do so under the constitution of the State of Colorado and its home rule charter and without in any way or manner intending to waive or waiving the defenses or limitations on damages provided for under and pursuant to the Colorado Governmental Immunity Act (Section 24-10-101 C.R.S. *et seq.*), the Colorado constitution, its home rule charter or under the common law or laws of the United States or the State of Colorado shall indemnify, defend and hold Kilgroe harmless from any liability, obligation, cost or judgment incurred by Kilgroe, related to this Agreement resulting from any negligent or intentional acts of the City or breach of any representations, covenants or warranties.

17. Representations and Warranties of the City. During the term of the Lease of the Property, the City represents and warrants to Kilgroe that it:

A. Shall use the Property only for lawful purposes.

B. Shall not engage in, allow, effect or permit any use or transaction, which may adversely affect Kilgroe's good and merchantable fee simple title to the Property.

18. Time of Essence. Time is of the essence, and all terms, conditions and covenants shall be tendered or performed as specified herein.

19. Further Acts. Each party agrees to perform or cause to be performed on or after the lease possession date and the closing date such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

20. Default. In the event a party is in default of any provision of the Agreement, and the non-defaulting party is required to initiate litigation to remedy the default, the prevailing party shall be awarded its costs and attorneys' fees. n

21. Covenants Survive Closing. The terms and conditions of this Agreement shall not merge and shall extend beyond the time of lease, possession, conveyance and closing of the Property.

22. Notices. Notices may be effected to either party by mailing, via certified mail, return receipt requested, to each party at:

City of Golden  
Attention: City Manager  
911 10th Street  
Golden, CO 80401

Jo Ann Kilgroe and  
Lance Kilgroe  
1440 Brickyard Road, Unit 3  
Golden, CO 80403

With copy to:  
Raule G. Nemer, Esq.  
Toussaint, Nemer & Coaty, P.C.  
3081 Bergen Peak Drive, Ste. 210  
Evergreen, Colorado 80439

23. General Provisions.

A. This Agreement may only be amended in writing signed by all parties.

B. This Agreement shall not be assigned by any party without the written consent of the other party, which consent shall not be unreasonably withheld.

C. This Agreement shall be governed by the laws of the State of Colorado. Venue for any litigation regarding this Agreement shall be in Jefferson County, Colorado.

D. This Agreement may be recorded by either party.

E. The persons signing this Agreement on behalf of each of the parties are authorized to bind and by their signatures hereby do bind such parties to the terms of this Agreement.

CITY

By: C. J. Baroch  
Charles J. Baroch

Title: Mayor

State of Colorado )  
Count of Jefferson )ss

8

The foregoing instrument was acknowledged before me this 19th day of May, 2005 by Charles J Baroch, Mayor for the City of Golden.

Witness my hand and official seal.

My Commission expires: Sept 19, 2005

Susan D. Brub  
Notary Public



Lance H. Kilgroe  
Lance H. Kilgroe

Jo Ann Kilgroe  
Jo Ann Kilgroe

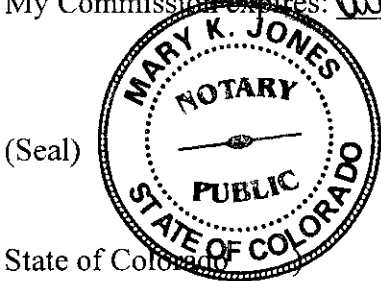
(Notary provisions continued on following page)

State of Colorado )  
 )ss  
Count of Jefferson )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of May, 2005 by \_\_\_\_\_ Jo Ann Kilgroe.

Witness my hand and official seal.

My Commission expires: August 25, 2007



Mary K. Jones  
Notary Public

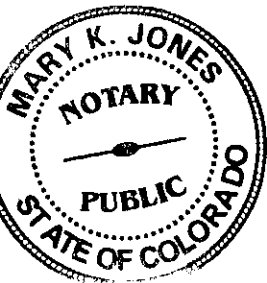
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State of Colorado )  
 )ss  
Count of Jefferson )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of May, 2005 by \_\_\_\_\_ Lance H. Kilgroe.

Witness my hand and official seal.

My Commission expires: August 25, 2007



Mary K. Jones  
Notary Public

kilgroe/house transaction/kilgroe doc 51305 FINAL.RTF

**EXHIBIT "A"**

A parcel of land in the West 1/2 of Section 21, Township 3 South, Range 70 West of the 6<sup>th</sup> P.M., more particularly described as follows:

Beginning at the West 1/4 corner of said Section 21; Thence South 0°02'31" East along the West line of the Southwest 1/4 of said Section 21, 433.60 feet to a point on the North right of way line of Golden Gate Canyon Road; Thence South 73°43'32" East along said right of way line 647.55 feet; Thence North 10°29' 12" East departing said right of way 1,081.13 feet; Thence North 12°14'23" East 541.94 feet to a point on the South line of Pine Ridge Road; Thence South 89°52'47" West along said South line 255.88 feet to a point of curve; Thence along a curve to the right having a central angle of 53°55'38", a radius of 638.00 feet, a length of 600.49 feet and a long chord which bears North 63°09'26" West at a distance of 578.57 feet; Thence North 36°11'18" West 143.68 feet to a point of curve; Thence along a curve to the right having a central angle of 23°01' 35", a radius of 465.00 feet, a length of 186.88 feet and a long chord which bears North 24°40'52" West a distance of 185.62 feet to a point on the West line of the Northwest Vi of said Section 21; Thence South 0°01'57" East 1,512.97 feet to the True Point of Beginning, County of Jefferson, State of Colorado.

10

**EXHIBIT "B"**

Year	<b>Principal and Interest Paid at the beginning of the period</b>				
	Payment Type	Principal	Interest*	Total Payment	Principal Remaining
04/01/2005	downpay	\$600,000	\$0	\$600,000	\$3,335,000
01/30/2006	lease	\$0	\$100,050	\$100,050	\$3,335,000
01/30/2007	lease	\$0	\$100,050	\$100,050	\$3,335,000
01/30/2008	lease	\$0	\$100,050	\$100,050	\$3,335,000
01/30/2009	lease	\$361,940	\$118,922	\$480,863	\$2,973,060
01/30/2010	lease	\$376,418	\$103,866	\$480,284	\$2,596,642
01/30/2011	lease	\$391,475	\$88,207	\$479,681	\$2,205,167
01/30/2012	lease	\$407,134	\$71,921	\$479,055	\$1,798,033
01/30/2013	lease	\$423,419	\$54,985	\$478,404	\$1,374,614
01/30/2014	lease	\$440,356	\$37,370	\$477,726	\$934,259
01/30/2015	lease	\$457,970	\$19,052	\$477,022	\$476,289
01/30/2016	lease	\$476,288	\$0	\$476,288	\$1
12/15/2016	purch	\$1	\$0	\$1	
		\$3,935,000	\$794,473	\$4,729,473	

**NOTE:** No Prepayment Penalty  
 \* 0% interest in 2005  
 \* 3% interest in 2006, 2007 and 2008  
 \* 4% interest from 2009 on

## **EXHIBIT "C"**

### **Property for Immediate Possession**

All of that property described in Exhibit "A" of this Agreement except for that 2.5 acre parcel described as the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21, Township 3 South, Range 70 West of the Sixth Prime Meridian, Jefferson County, Colorado

12



R \$16.00

D \$0.00

AMEASE

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Jefferson County, Colorado

**FIRST AMENDMENT TO EASEMENT AND  
LICENSE AGREEMENT**

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**WHEREAS**, by Easement and License Agreement recorded December 21, 2004 at Reception No. F2147201 and Easement and License Agreement recorded December 10, 2004, at Reception No. F2142242, and Restated Easement and License Agreement recorded January 18, 2005 at Reception No. F2159760, all in the records of the Clerk and Recorder for the County of Jefferson, State of Colorado (collectively the "Agreement"), Brickyard Holdings LLC ("Brickyard") did acquire easement and license rights with respect to certain real property located within the City of Golden, County of Jefferson, and State of Colorado as specifically described in the Agreement; and

**WHEREAS**, by the Agreement, Lance H. Kilgroe, JoAnn Kilgroe, L.H. Kilgroe Construction Company, and L.H. Kilgroe Construction Company, LLC (collectively, "Kilgroe") did agree to construct a roadway as described therein to connect Brickyard's property to Golden Gate Canyon Road; and

**WHEREAS**, pursuant to that certain Lease/Option to Purchase Agreement dated May 11, 2005, the City of Golden has an option to purchase the real property subject to the Agreements and has agreed to construct a public roadway to connect Brickyard's property to Golden Gate Canyon Road; and

**WHEREAS**, upon completion of the roadway between Pine Ridge Road and Golden Gate Road and its designation as a public roadway by the City of Golden, Brickyard will have no further need for the rights granted to it by the Agreement and, in particular, the easement and license described therein;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, Kilgroe and Brickyard agree as follows:

1. Paragraph 4 of the Agreement is hereby amended by replacing September 1, 2005 with January 10, 2006. The second sentence is amended to provide that if construction of the Roadway has not begun by November 15, 2005, then Brickyard shall have the rights set forth in the second sentence of Paragraph 4.
2. Notwithstanding the dates for commencement and completion set forth in paragraph 1, above, if Brickyard's sale to McStain Enterprises, Inc. for any reason fails to close by July 29, 2005, the date for completion of the Roadway shall be extended as follows: Brickyard shall give written notice of its desired new completion date to Kilgroe, which date shall be no less than six months from the date of Brickyard's notice, and upon the giving of such notice, this Amendment shall be deemed amended to include the new completion date and a commencement date of forty-five (45) days prior to the new completion date.
3. Upon the completion of construction of a public roadway which extends from the main entrance to the Canyon View III Subdivision on Pine Ridge Road to Golden Gate Canyon Road (the "Roadway"), as evidenced by the recording by the City of Golden of an Affidavit signed by an appropriate official of the City of Golden which states that the Roadway has been completed in accordance with applicable City of Golden public roadway standards and that it is open as a public street, the Agreement will terminate and Brickyard will be deemed, without any further action, to have remised, released, sold and QUITCLAIMED unto the City of Golden, of 911 10<sup>th</sup> Street, Golden, Colorado, all the right, title, interest, claim and demand which Brickyard has in and to the easement described in the Agreement and the real property located in the City of Golden, County of Jefferson, and State of Colorado, burdened by the Agreement and to have terminated and abandoned any rights Brickyard does or may have by virtue of the license set forth in the Agreement.
4. Except as herein amended, the terms and the conditions of the Agreement shall remain in full force and effect, and are enforceable in accordance with their terms.
5. This Amendment may be executed in two or more counterparts, all of which, taken together, shall be deemed to be one and the same instrument. Signature and acknowledgment pages may be detached from signed counterparts and reattached to others for purposes of recording. Facsimile signatures shall be accepted in lieu of originals for all purposes under this Amendment; provided, however, that any party, upon request, shall furnish to any party requesting it a signed original counterpart of this Amendment. No delay in transmitting such signed, acknowledged originals shall affect or delay the effectiveness of this Amendment.

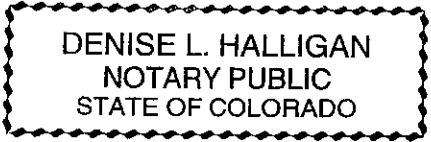
CLIENT COPY - PLEASE REVIEW  
AND RETAIN FOR YOUR RECORDS  
Mailed 6/24 By RJB  
TOUSSAINT, NEMER & COATY, P.C.



IN WITNESS WHEREOF, Brickyard and Kilgroe have executed this First Amendment to Easement and License Agreement on the dates set forth below.

BRICKYARD HOLDINGS LLC

By: [Signature] HK  
Richard A. Perry, Manager  
[Signature]



My Commission Expires 02/02/2008

[Handwritten mark]

STATE OF COLORADO )  
  )ss.  
County of Jefferson )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of May, 2005, by Richard A. Perry, as Manager of Brickyard Holdings LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 2/2/08

[Signature]  
Notary Public

L.H. KILGROE CONSTRUCTION COMPANY

By: Lance H. Kilgroe  
Lance H. Kilgroe, general partner

L.H. KILGROE CONSTRUCTION COMPANY, LLC

By: Lance H. Kilgroe  
Lance H. Kilgroe, Manger

Lance H. Kilgroe  
Lance H. Kilgroe

Jo Ann Kilgroe  
Jo Ann Kilgroe

3

State of Colorado )  
 )ss  
County of Jefferson

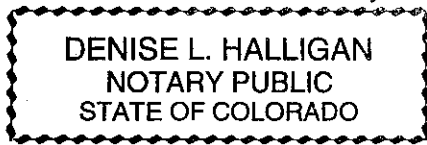
The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of May, 2005 by Jo Ann Kilgroe.

Witness my hand and official seal.

My Commission expires: 2/2/08

Denise L. Halligan  
Notary Public

(Seal)



State of Colorado )  
 )ss  
County of Jefferson

My Commission Expires 02/02/2008

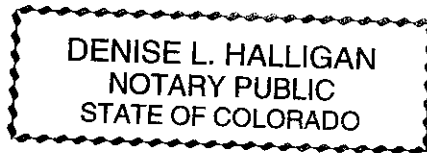
The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of May, 2005 by Lance H. Kilgroe individually and as general partner of L.H. Kilgroe Construction Company, a Colorado general partnership, and as Manager of L.H. Kilgroe Construction Company, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission expires: 2/2/08

Denise L. Halligan  
Notary Public

(Seal)



My Commission Expires 02/02/2008

# EXHIBIT A

A PARCEL OF LAND LOCATED WITHIN  
SECTION 21, TOWNSHIP 3 SOUTH, RANGE 70 WEST  
OF THE SIXTH PRINCIPAL MERIDIAN  
COUNTY OF JEFFERSON, STATE OF COLORADO

## DESCRIPTION:

A PARCEL OF LAND LOCATED WITHIN SECTION 21, TOWNSHIP 3 SOUTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 21 WHENCE THE NORTHWEST CORNER THEREOF BEARS N 00°02'35" W, 2830.48 FEET BETWEEN THE FOUND MONUMENTS SHOWN HEREON WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE ALONG THE WEST LINE OF SAID SECTION N 00°02'35" W, 1496.60 FEET TO A POINT ALONG THE SOUTHERLY RIGHT-OF-WAY OF PINE RIDGE ROAD; THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING FOUR COURSES:

- 1) ALONG THE ARC OF A CURVE TO THE LEFT 125.08 FEET, HAVING A RADIUS OF 300.00 FEET, A CENTRAL ANGLE OF 23°53'22" AND WHICH CHORD BEARS S 24°48'46" E, 124.18 FEET;
- 2) THENCE S 38°45'27" E, 214.96 FEET;
- 3) THENCE ALONG THE ARC OF A CURVE TO THE LEFT 563.32 FEET, HAVING A RADIUS OF 605.00 FEET, A CENTRAL ANGLE OF 53°20'53" AND WHICH CHORD BEARS S 63°25'54" E, 543.19 FEET;
- 4) THENCE N 88°53'40" E, 268.24 FEET;

THENCE S 127°1'23" W, 485.88 FEET; THENCE S 10°29'13" W, 1126.45 FEET TO A POINT ALONG THE NORTHERLY RIGHT-OF-WAY OF GOLDEN GATE CANYON ROAD; THENCE ALONG SAID RIGHT-OF-WAY N 73°43'32" W, 646.85 FEET TO A POINT ALONG THE WEST LINE OF SAID SECTION 21; THENCE ALONG SAID LINE N 00°17'23" E, 443.74 FEET TO THE POINT OF BEGINNING, CONTAINING 29.31 ACRES MORE OR LESS.

PROJECT NO. 031

NOTE:  
THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY.  
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

PAGE 1 OF 2

**C.C.S. CONSULTANTS, INC.**

1445 West I-70 Frontage Road North  
Suite 102, Wheat Ridge, Colorado 80033  
303-403-4706 Fax 303-403-0900

# EXHIBIT A (cont)

A PARCEL OF LAND LOCATED WITHIN  
SECTION 21, TOWNSHIP 3 SOUTH, RANGE 70 WEST  
OF THE SIXTH PRINCIPAL MERIDIAN  
COUNTY OF JEFFERSON, STATE OF COLORADO

NORTHWEST CORNER  
SECTION 21  
FOUND 3-1/4" DIAMETER  
ALUMINUM CAP L.S. 27278

L=125.08'  
R=300.00'  
Δ=23°53'22"  
CB=S 24°48'46" E  
CH=124.18'

N 00°02'35" W 2630.48'  
(BASIS OF BEARINGS)

S 36°45'27" E  
274.96'

L=563.32'  
R=605.00'  
Δ=53°20'53"  
CB=S 63°25'54" E  
CH=543.19'

N 89°53'40" E  
268.24'

1496.50'

495.88'  
S 12°44'23" W

29.31 ACRES

POINT OF BEGINNING

WEST QUARTER CORNER  
SECTION 21  
FOUND 2" DIAMETER  
ALUMINUM CAP L.S. 14112

N 00°17'23" W  
443.74'

1128.45'  
S 10°29'13" W

SCALE: 1"=200'  
DATE: 03.29.05

646.85'  
N 73°43'32" W

**C.C.S. CONSULTANTS, INC.**

11445 West I-70 Frontage Road North  
Suite 102, Wheat Ridge, Colorado 80033  
303-403-4706 Fax 303-403-0800

NOTE:  
THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY.  
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

EXHIBIT B

Year	Principal and Interest Paid at the beginning of the period				
	Payment Type	Principal	Interest*	Total Payment	Principal Remaining
04/01/2005	downpay	\$600,000	\$0	\$600,000	\$3,335,000
01/30/2006	lease	\$0	\$100,050	\$100,050	\$3,335,000
01/30/2007	lease	\$0	\$100,050	\$100,050	\$3,335,000
01/30/2008	lease	\$0	\$100,050	\$100,050	\$3,335,000
01/30/2009	lease	\$361,940	\$133,400	\$495,340	\$2,973,060
01/30/2010	lease	\$376,418	\$118,922	\$495,340	\$2,596,642
01/30/2011	lease	\$391,475	\$103,866	\$495,340	\$2,205,167
01/30/2012	lease	\$407,134	\$88,207	\$495,340	\$1,798,033
01/30/2013	lease	\$423,419	\$71,921	\$495,340	\$1,374,614
01/30/2014	lease	\$440,356	\$54,985	\$495,340	\$934,259
01/30/2015	lease	\$457,970	\$37,370	\$495,340	\$476,289
01/30/2015	lease	\$476,288	\$19,052	\$495,340	\$1
12/15/2015	purch	\$1	\$0	\$1	
		\$3,935,000	\$927,873	\$4,862,873	

NOTE: No Prepayment Penalty  
 \* 0% interest in 2005  
 \* 3% interest in 2006, 2007 and 2008  
 \* 4% interest from 2009 on