

SUBJECT: A RESOLUTION APPROVING ASSIGNMENTS OF DETENTION POND MAINTENANCE AND LICENSE AGREEMENT AND MAINTENANCE AND LICENSE AGREEMENT FOR THE DELO SUBDIVISION

DATE: SEPTEMBER 3, 2024

PRESENTED BY: KATHLEEN KELLY, CITY ATTORNEY

SUMMARY: The City and Delo Apartments, LLC are parties to two agreements relating to the Delo Subdivision: (1) a Detention Pond Maintenance and License Agreement; and (2) a Maintenance and License Agreement. The City was contacted by counsel for Delo Apartments requesting the City Council approve assignment of these agreements to the buyer in connection with a sale of the property (CT Delo, LLC and HG Delo, LLC).

When reviewing the obligations of the agreements, City staff discovered the required performance guarantees do not appear to have been provided and the required reports of inspection of the detention pond have not been filed. If adopted, the Resolution approving assignments of these agreement conditions the City Council's approval of the assignment on the required performance guarantees being provided, the inspection being completed, and the required report being filed with the City.

RECOMMENDATION:

City Council approve Resolution No. 40, Series 2024

ATTACHMENT(S):

1. Resolution No. 40, Series 2024
2. Detention Pond Maintenance and License Agreement dated August 4, 2017
3. Assignment of Detention Pond Maintenance and License Agreement
4. Maintenance and License Agreement dated August 3, 2017
3. Assignment of Maintenance and License Agreement

STRATEGIC PLAN IMPACT:

☐	 Financial Stewardship & Asset Management	☒	 Reliable Core Services
☐	 Vibrant Economic Climate	☐	 Quality Programs & Amenities
☐	 Engaged Community	☐	 Healthy Workforce

SUBJECT: RESOLUTION APPROVING ASSIGNMENT OF AGREEMENTS

DATE: SEPTEMBER 3, 2024

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☐		Supportive Technology	☐		Collaborative Regional Partner
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**RESOLUTION NO. 40
SERIES 2024**

**A RESOLUTION APPROVING ASSIGNMENTS OF
DETENTION POND MAINTENANCE AND LICENSE AGREEMENT
AND MAINTENANCE AND LICENSE AGREEMENT
FOR THE DELO SUBDIVISION**

WHEREAS, in connection with the Delo Subdivision, certain lands were dedicated to the City for detention pond, park and public purposes, for which the Subdivider and its successors were responsible for maintenance pursuant to a maintenance agreement; and

WHEREAS, in 2017, the City entered into two agreements with Delo Apartments, LLC ("Delo Apartments"): a Maintenance and License Agreement; and a Detention Pond Maintenance and License Agreement; and

WHEREAS, each agreement requires a Performance Guarantee of \$10,000.00 to ensure faithful performance of the obligations under each agreement, which Performance Guarantee; and

WHEREAS, each agreement requires inspections and reporting to the City, which does not appear to have been completed by Delo Apartments; and

WHEREAS, each agreement requires prior written approval of the City before the agreement may be assigned to any other party, and the City may require the successor to execute its consent to such assignment to be bound by the terms and conditions of the agreement; and

WHEREAS, the City has reviewed the assignments of such agreements that accompany this resolution, and desire to approve the same on the conditions set forth herein.

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

1. The proposed Assignment of Detention Pond Maintenance and License Agreement, which assigns such agreement to CT Delo, LLC and HG Delo, LLC (together, "Assignee"), is hereby approved in essentially the same form as the copy accompanying this Resolution, conditioned on the following:

A. Prior to execution of the Assignment by the City, the Assignee shall post with the City and maintain for the Maintenance Term of the Agreement (as such term is defined in the Agreement), a cash deposit in the amount of \$10,000.00 (the "Performance Guarantee"), for the purpose of assuring Assignees' faithful performance of its obligations under the Agreement.

B. Prior to execution of the Assignment by the City, either Delo Apartment or the Assignee shall perform an inspection of the Detention Pond as required by the Agreement, and shall submit to the City a report of such inspection. Further, Assignee shall perform such inspections and submit such reports, covering all facilities, every six months, as required by the Agreement.

2. The proposed Assignment of Maintenance and License Agreement, which assigns such agreement to CT Delo, LLC and HG Delo, LLC (together, "Assignee"), is hereby approved in essentially the same form as the copy accompanying this Resolution, conditioned on the following:

A. Prior to execution of the Assignment by the City, the Assignee shall post with the City and maintain for the Maintenance Term of the Agreement (as such term is defined in the Agreement), a cash deposit in the amount of \$10,000.00 (the "Performance Guarantee"), for the purpose of assuring Assignees' faithful performance of its obligations under the Agreement.

3. The Mayor is hereby authorized to execute each of the Assignments on behalf of the City Council, and the Mayor is hereby further authorized to negotiate and approve such revisions to said Assignments prior to their execution as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Assignments and this Resolution are not altered.

PASSED AND ADOPTED this 3rd day of September, 2024.

Christopher M. Leh, Mayor

ATTEST:

Genny Kline, Interim City Clerk

**DETENTION POND
MAINTENANCE AND LICENSE AGREEMENT**
(Delo Subdivision, City of Louisville)

THIS DETENTION POND MAINTENANCE AND LICENSE AGREEMENT ("Agreement") is made and entered into this 4th day of August, 2017, by and between the **CITY OF LOUISVILLE**, a Colorado home rule municipal corporation, in the County of Boulder, State of Colorado (the "City"), and **DELO APARTMENTS, LLC**, a Colorado limited liability company ("Delo Apartments").

RECITALS

A. The City owns real property located in the City of Louisville, County of Boulder, Colorado, described as follows (hereinafter, the "City Parcel"):

Lot 1, Louisville Wastewater Treatment Plant Final Plat,
County of Boulder,
State of Colorado.

B. Delo Apartments owns real property located in the City of Louisville, County of Boulder, Colorado, described as follows (hereinafter, the "Apartments Lot"):

Lots 1, 2, 3 Block 13, Lot 1, Block 14, Tracts A, B, C, D and E, Outlot A and the portion of Cannon Street and East Lafayette Street all a part of Delo Subdivision Replat No. 1, along with Nawatny Greenway, located in Section 8, Township 1 South, Range 69 West of the 6th P.M.,
County of Boulder,
State of Colorado.

C. South Street Commercial, LLC ("SSC") owns real property located in the City of Louisville, County of Boulder, Colorado, described as follows (hereinafter, the "Commercial Lot"):

Lot 4, Block 13, a part of Delo Subdivision Replat No. 1, located in Section 8, Township 1 South, Range 69 West of the 6th P.M.,
County of Boulder,
State of Colorado.

D. Delo West, LLC ("Delo West") owns real property located in the City of Louisville, County of Boulder, Colorado, described as follows (hereinafter, the "Delo West Lot"):

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 Block 1, Tracts A, B, C, D, and E, and Outlot 1 located in the Northeast ¼ of Section 8, Township 1 South, Range 69 West of the 6th P.M.,
County of Boulder,
State of Colorado.

E. Boulder Creek Owners Association (the "Association") owns real property located in the City of Louisville, County of Boulder, Colorado, described as follows (hereinafter, the "Association Lots"):

LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 1;
LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 2;
LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 3;
LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 4;
LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 5;
LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 6;
LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 7;
LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 8;
LOTS 1 THROUGH 6, INCLUSIVE, BLOCK 10;
LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 11;
DELO SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED
OCTOBER 3, 2014 UNDER RECEPTION NO. 03406287,
County of Boulder,
State of Colorado

F. Stephen D. Tebo ("Tebo") owns real property located in the City of Louisville, County of Boulder, Colorado, described as follows (hereinafter, the "Tebo Lots"):

A tract of land located in the Northeast $\frac{1}{4}$ of Section 8, Township 1 South, Range 69 West of the 6th P.M., described as follows:

Beginning at the East $\frac{1}{4}$ corner of said Section 8;

Thence North **39°41'04"** West a distance of **67.74** feet to a point on the North Right-of-Way line of South Street to the True Point of Beginning;

Thence North 44°36'09" East a distance of 28.35 feet to a point on the West Right-of-Way line of Courtesy Road (Colorado State Highway 42);

Thence North 00°01'11" East along the West Right-of-Way line of Courtesy Road (Colorado State Highway 42) a distance of 310.04 feet;

Thence North 44°58'49" West a distance of 27.86 feet to a point on the South Right-of-Way line of Short Street;

Thence North 89°58'10" East along the South Right-of-Way line of Short Street a distance of 467.50 feet;

Thence South 00°01'35" West a distance of 347.61 feet to a point on the North Right-of-Way line of South Street;

Thence South 89°41'04" East along said North Right-of-Way line of South Street a distance of 467.34 feet to the True Point of Beginning;

County of Boulder,
State of Colorado.

G. Each of the Apartments Lot, Commercial Lot, Delo West Lot, Association Lots, and Tebo Lots shall be referred to as a “Lot” and together shall be referred to as the “Lots.”

H. Delo Apartments, SSC, Delo West, the Association and Tebo shall hereinafter be referred to each as a “Lot Owner” and together as the “Lot Owners”.

I. The City has approved the following plats and plans for the Delo Subdivision and the Delo Plaza Subdivision (collectively, the “Subdivision”) generally located west of State Highway 42 and east of the BNSF right-of-way between Griffith and South Streets in the City of Louisville (the “Approved Subdivision Documents”): Delo Subdivision Plat dated October 3, 2014 and recorded at Reception No. 03406287 in the Office of the Boulder County Clerk and Recorder (“Boulder County Records”); Delo Final Planned Unit Development Phase 1 dated October 3, 2014 and recorded at Reception No. 03406288, Boulder County Records; Delo Subdivision – Replat No. 1 dated September 25, 2015 and recorded at Reception No. 03475556, Boulder County Records; Delo Final Planned Unit Development Phase 2 dated September 9, 2015 and recorded at Reception No. 03475557, Boulder County Records; Industrial Area Subdivision – Replat No. 1 dated September 18, 2015 and recorded at Reception No. 03474387, Boulder County Records; Delo Plaza Subdivision Plat dated February 25, 2016 and recorded at Reception No. 03503015, Boulder County Records; and Delo Plaza Final Planned Unit Development Plan dated February 25, 2016 and recorded at Reception No. 03503017, Boulder County Records.

J. In connection with the Approved Subdivision Documents, the Delo Phase 2 Subdivision Agreement dated September 25, 2015 and recorded at Reception No. 0347555, Boulder County Records, as amended by that certain Amendment to Subdivision Agreement dated June 2, 2016 and recorded at Reception No. 3522000, Boulder County Records (together, the “Phase 2 SA”), and the Core Project Area Agreement dated July 1, 2014 (“CPAA”), a copy of which CPAA is Exhibit D to the Phase 2 SA, Takoda Properties Inc. (“Takoda”) and the City entered into a Revocable License Agreement dated July 20, 2015 (“License Agreement”), under which Takoda was granted a license to construct a detention pond and associated facilities on the City Parcel, and associated off-site piping and structures within the Harney-Lastoka Maintenance Area, as defined herein (“Detention Pond”) for the benefit of the Lots and the “Core Project Area” as described in Exhibit A to the CPAA, which Detention Pond is generally depicted on Exhibit A attached hereto. Takoda has assigned the License Agreement to Delo Apartments.

K. Pursuant to the Approved Subdivision Documents and the Phase 2 SA, the Subdivider under the Phase 2 SA and its successors are responsible for all maintenance of the Detention Pond in accordance with a maintenance and license agreement with the City.

L. The parties desire to enter into this Agreement to serve as the maintenance and license agreement setting forth the license granted to and obligations of Delo Apartments for the maintenance of the Detention Pond.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

1. **Term.** This Agreement shall be effective on the date the City has issued its

written “Construction Acceptance” of the Detention Pond in accordance with the Phase 2 SA, and shall remain in effect until the date the Detention Pond ceases to be necessary for the then-existing uses of the Lots as solely determined in writing by resolution of the City Council of the City (the “Maintenance Term”).

2. License. The City hereby grants to Delo Apartments, and its agents, employees and contractors a non-exclusive license to enter into, over, across and upon the City Parcel for the purpose of access, ingress, egress and all activities related to the maintenance of the Detention Pond during the Maintenance Term.

3. Maintenance & Related Obligations.

(a) *General Maintenance.* Delo Apartments, at its sole expense, shall maintain the Detention Pond and all associated stormwater best management practices (BMPs) to ensure they function properly under the conditions for which they were designed. This obligation includes without limitation maintenance of all pipes and channels built to convey stormwater, as well maintenance of all structures, improvements, and vegetation provided to control the quantity and quality of stormwater shown on Exhibit B, and includes without limitation the piping and associated structures located within the adjacent “Harney-Lastoka Maintenance Area” described in Exhibit B. Adequate maintenance is defined as actions which ensure that the Detention Pond and associated BMPs function as designed as determined by the City and includes, without limitation, that Delo Apartments shall undertake mowing and trimming, weed control, and litter and graffiti removal in accordance with the minimum standards set forth in Exhibit C attached hereto. Delo Apartments shall ensure that all maintenance activities comply with the City standards and all other applicable local, state, and federal laws and regulations, including without limitation those pertaining to confined space and waste disposal methods.

(b) *Inspections.* Delo Apartments, at its sole expense, shall inspect the Detention Pond to ensure the Detention Pond and all associated BMPs function properly under the conditions for which they were designed. Inspections shall be performed at least once every six months and shall cover all facilities.

(c) *Reporting.* After each inspection, Delo Apartments shall submit to the City the inspection report for the current period in the format provided by the City, in form attached hereto as Exhibit D (“Inspection Report”). The Inspection Report shall cover all Detention Pond facilities on the City Parcel and consist of a concise summary of inspection dates and findings, remedial actions taken, how the actions were completed and who performed them, any problems encountered, and any required follow-up actions such as any maintenance, repair or replacement. Inspection Reports shall be submitted at least once every six months to the City at the address set forth below. The City shall give written notice of any changes to the Inspection Report being requested by the City at least 30 days prior to the submittal due date.

(d) *Facility Modification.* Except in the event of an emergency, Delo Apartments shall obtain written approval from the City prior to performing any alterations or modifications to the Detention Pond facilities covered under this Agreement. Delo Apartments shall submit to the City any proposed alteration or modification to the Detention Pond facilities, and the City

shall use reasonable efforts to respond with its approval or reasons for rejection within 30 days thereafter.

(e) *Entry onto City Parcel.* Except in the event of an emergency, Delo Apartments shall obtain written approval from the City at least 48 hours prior to entering the City Parcel to complete any inspections or maintenance activities, unless the City's Public Works Director has in writing waived or reduced the time period for notice in advance of entry onto the City Parcel. In the event of an emergency, Delo Apartments shall give notice to the City at the time of the emergency, via emergency contact information provided by the City, in order to obtain permission for its entry onto the City Parcel. Inspections or maintenance activities shall be scheduled to coincide with wastewater treatment plant normal operation hours.

4. Noncompliance and Remedies.

(a) If Delo Apartments fails to comply with its obligations under this Agreement to maintain the Detention Pond, or fails to comply with any other provisions hereof, such noncompliance shall constitute a breach of this Agreement. The City, in addition to any other remedy available to it for breach, shall have the right but not the obligation to take such measures as it determines necessary to bring the Detention Pond facilities into compliance with this Agreement, and the cost of any such measures shall be paid to the City by Delo Apartments. Except during an emergency, the City shall provide written notice to Delo Apartments, not to be less than fifteen (15) days, and allow Delo Apartments the opportunity to perform such measures. If Delo Apartments fails to perform such measures within the time prescribed and to the City's satisfaction, upon providing Delo Apartments at least five (5) business days' notice, the City may cause such measures to be taken, and the actual cost thereof, including without limitation all costs for labor, material and equipment used to complete such measures, accompanied by reasonable evidence of such expenditures, shall be paid by Delo Apartments within 30 days of written demand for payment thereof. Any amounts not so paid shall bear interest at the rate of 0.5% per month from the date the demand was received until paid, and the City shall be entitled to all costs of collection to collect such amounts, including but not limited to court costs and reasonable attorney fees. In the event such amounts due are not so paid, then the City shall have the right upon expiration of the thirty (30) day payment period to deduct the amounts due from the performance guarantee provided to the City pursuant to Section 19 of this Agreement.

(b) The City shall also have the right to the remedy of injunctive relief to compel performance of the obligations of this Agreement. All remedies of the City shall be cumulative and the exercise of one remedy shall not preclude the City from pursuing other remedies for the same breach or any other breach of the same section or any other sections of this Agreement.

(c) It is expressly understood and agreed that the City is under no obligation to maintain or repair the Detention Pond and in no event shall this Agreement, or any election by the City to exercise its remedies under this Agreement, be construed to impose any such obligation on the City. To the contrary, Delo Apartments shall at all times be responsible and liable for all costs associated with the necessary maintenance, repair, restoration and replacement of the Detention Pond for so long as the Detention Pond services the Lots, excepting only liability resulting from gross negligence or willful or wanton conduct by the City, its officers and/or employees.

5. Maintenance Districts; Utility Charges.

(a) This Agreement shall not preclude the establishment of one or more special taxing districts, assessment districts or other mechanisms for maintaining, repairing, operating or replacing the Detention Pond, in accordance with applicable law. Further, this Agreement shall not limit the City's authority to adopt and impose stormwater utility charges for maintaining, repairing, operating or replacing the Detention Pond, in accordance with applicable law in the event (i) Delo Apartments breaches its obligations under this Agreement, or (ii) the Performance Guarantee has been fully expended by the City pursuant to Section 19 below.

(b) Nothing in the Agreement shall be construed to affect any agreements between or among the Lot Owners for reimbursement of maintenance costs incurred for maintenance of the Detention Pond.

6. City's Reservation of Rights. The City reserves the right to use and occupy the City Parcel for any purpose of the City not inconsistent with the use and operation of the Detention Pond. Delo Apartments hereby releases the City, its officers and employees from any and all claims of damage or liability for any disturbance of or damage to the Detention Pond resulting from the City's use of the City Parcel, excepting only liability resulting from gross negligence or willful or wanton conduct by the City, its officers and/or employees.

7. Insurance.

(a) Delo Apartments shall procure and maintain, and cause its subcontractors performing work on the Detention Pond to procure and maintain, the minimum insurance coverages listed below. All coverages shall be maintained to cover all liability, claims, demands, and other obligations pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such coverage.

1. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee or contractor engaged in any activity on the City Parcel pursuant to this Agreement.

2. General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate.

3. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per person in any one occurrence and ONE MILLION DOLLARS (\$1,000,000) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to vehicles assigned to or used in any maintenance activities relating to the Detention Pond.

(b) The policies required above, except for the Workers' Compensation insurance, shall be endorsed to include the City, and its officers and employees, as additional insureds with primary coverage as respects the City, its officers and its employees, and shall contain a severability of interests provision. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Delo Apartments. The additional insured endorsement for the General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The insurance holder shall be solely responsible for any deductible losses under each of the policies required above.

(c) Certificates of insurance shall be completed by the insurance holder's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. Each certificate shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy.

(d) Failure on the part of the Delo Apartments to procure and maintain and to cause its subcontractors to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of Delo Apartments' obligations hereunder, for which the City may immediately terminate or limit Delo Apartments' rights hereunder; or, at its discretion the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Delo Apartments to the City upon demand.

8. Indemnification. Except for liability resulting from gross negligence or willful or wanton conduct by the City, its officers and/or employees, Delo Apartments shall be solely responsible for all damages to persons or property which may in whole or in part be caused by Delo Apartments, or its agents, employees or contractors, or which may result or arise in whole or in part from their activities on the City Parcel, and Delo Apartments shall indemnify and hold harmless the City, its elected and appointed officials, and its employees, agents and representatives, from any and all liability, damage, loss, cost or expense, including but not limited to reasonable attorney fees, which the City, its elected and appointed officials, and its employees, agents and representatives may suffer as a result of any and all claims, demands, actions, costs or judgments made or brought against them by any person or entity, and which arise either in whole or in part from, or are in any way connected with, Delo Apartments' use and occupancy of the City Parcel, or with this Agreement or the rights and obligations of the Delo Apartments hereunder. By demanding this right to indemnification, the City in no way waives or intends to waive the limitations on liability or other protections which are provided to the City and its employees under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

9. Police Powers Retained. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of

the City and its inhabitants.

10. Notice. Except as provided in paragraph 3(e), any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, sent by national overnight courier or United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

City of Louisville
City Manager
749 Main Street
Louisville, CO 80027

Delo Apartments, LLC
c/o Justin McClure
1002 Griffith Street
Louisville, CO 80027

or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon personal delivery, receipt of facsimile transmission, or upon mailing (if sent by overnight courier or United States mail) in compliance with this paragraph.

11. No Joint Venture or Partnership. No form of joint venture or partnership exists between the City and Delo Apartments, and nothing contained in this Agreement shall be construed as making the City and Delo Apartments joint venturers or partners.

12. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than the parties hereto receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.

13. No Property Interest. Delo Apartments agrees that it does not have or claim, and shall not at any time in the future have or claim, any ownership interest or estate in the City Parcel by virtue of this Agreement or by virtue of its use of the Detention Pond, other than the license granted in Section 2 above.

14. Binding Effect of Agreement. This Agreement shall run with the Lots and the City Parcel and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. This Agreement shall be recorded in the real property records of the office of the Clerk and Recorder, County of Boulder, State of Colorado at Delo Apartments' expense.

15. Assignment, Delegation and Notice. This Agreement, or any part of this Agreement, may not be assigned by Delo Apartments to any other party without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City may require as part of any such approval that the successor execute its consent to such assignment to be bound by specified terms and conditions hereof and other applicable documents, and that such successor provide to the City a replacement Performance Guarantee prior to release of any Performance Guarantee then currently posted with the City.

16. **Modification and Waiver.** No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

17. **Authority.** The undersigned warrant to have full power and authority to enter into this Agreement.

18. **Severability.** This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that any provision of the Agreement is held to be violative of the City, state, or federal laws and hereby rendered unenforceable, the City, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

19. **Performance Guarantee.** Prior to the commencement of the Maintenance Term, Delo Apartments shall procure, post with the City and maintain for the Maintenance Term, a cash deposit with the City in the amount of Ten Thousand dollars (\$10,000.00) ("Performance Guarantee"), for the purpose of assuring Delo Apartments' faithful performance of its maintenance obligations under this Agreement. If Delo Apartments fails to perform its maintenance obligations or fails to pay the City's costs for performing such maintenance obligations, after notice from the City, as described in Section 4 above, the City may use funds from the Performance Guarantee for such costs. Upon demonstrated consistent compliance with the maintenance obligations in this Agreement for a period of five years after the commencement of the Maintenance Term, Delo Apartments may apply to the City for a return of the Performance Guarantee, which shall not be unreasonably withheld by the City. Any interest accrued on the Performance Guarantee shall accrue to the City. The Performance Guarantee required by this Agreement may not be combined with any other Performance Guarantee.

20. **Recitals.** The Recitals hereinabove set forth are incorporated in and made a part of this Agreement.

10

EXHIBIT A
TO DETENTION POND MAINTENANCE AND LICENSE AGREEMENT
(City Parcel – Detention Pond)

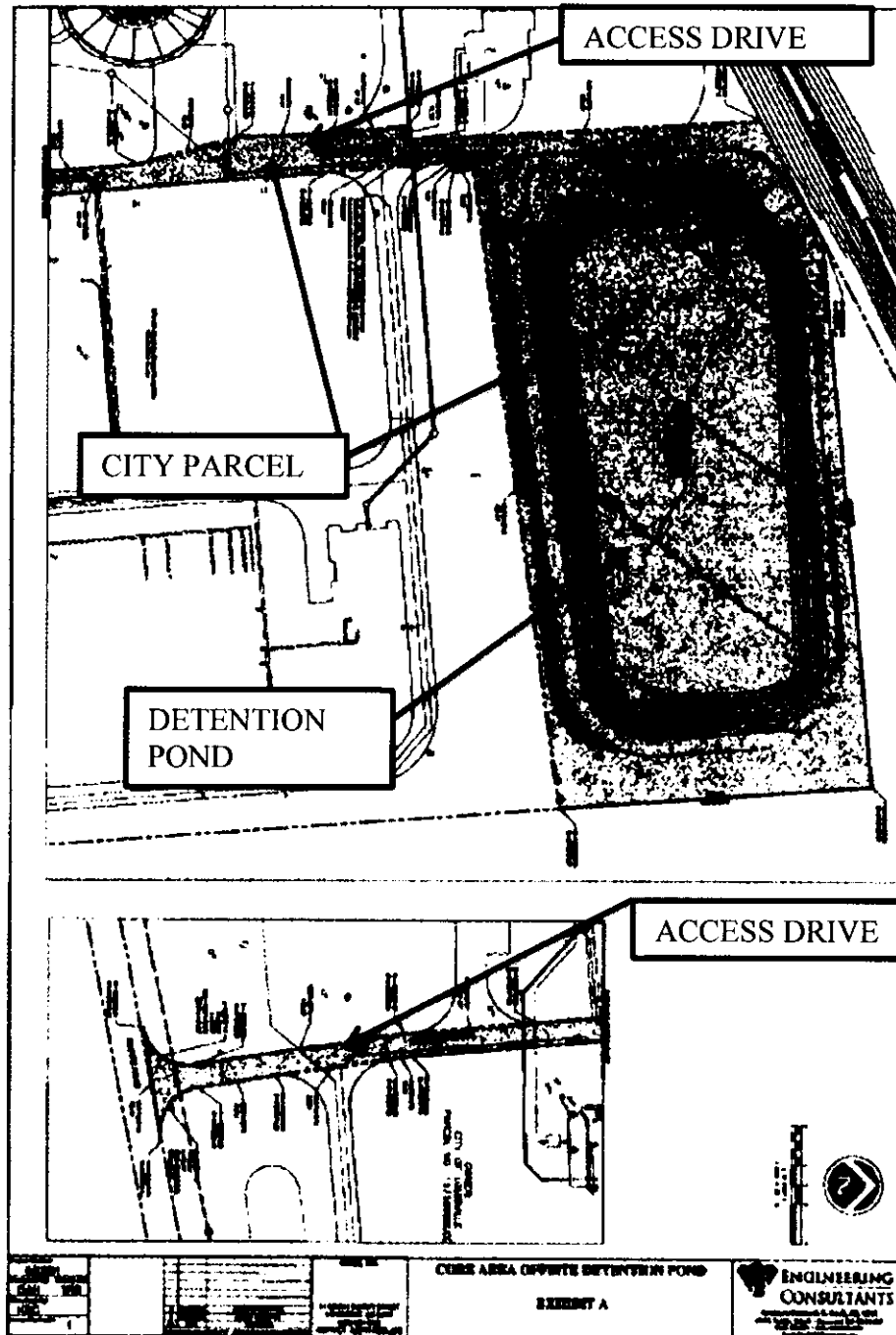
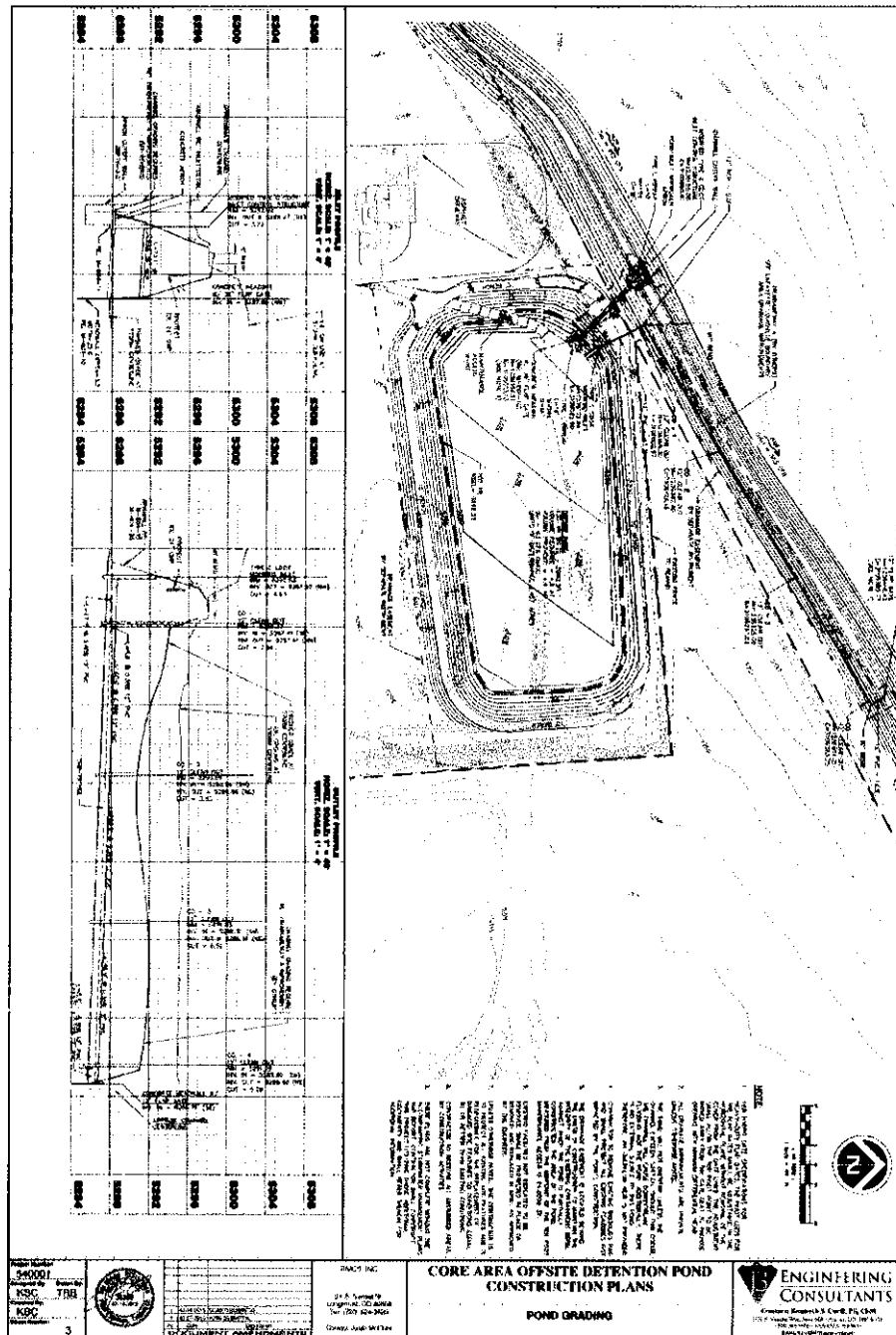
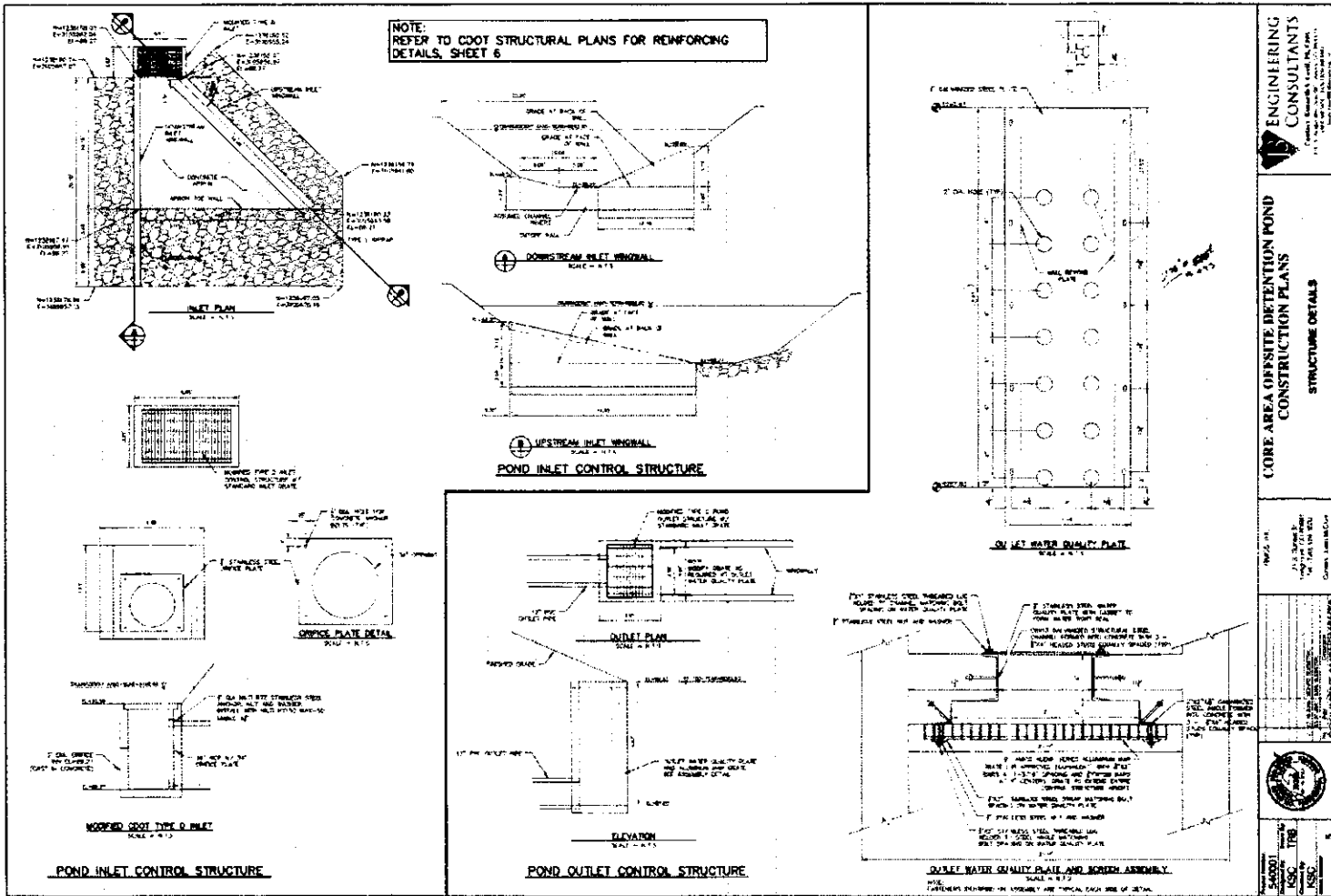


EXHIBIT B
TO DETENTION POND MAINTENANCE AND LICENSE AGREEMENT
(Facilities to be maintained)

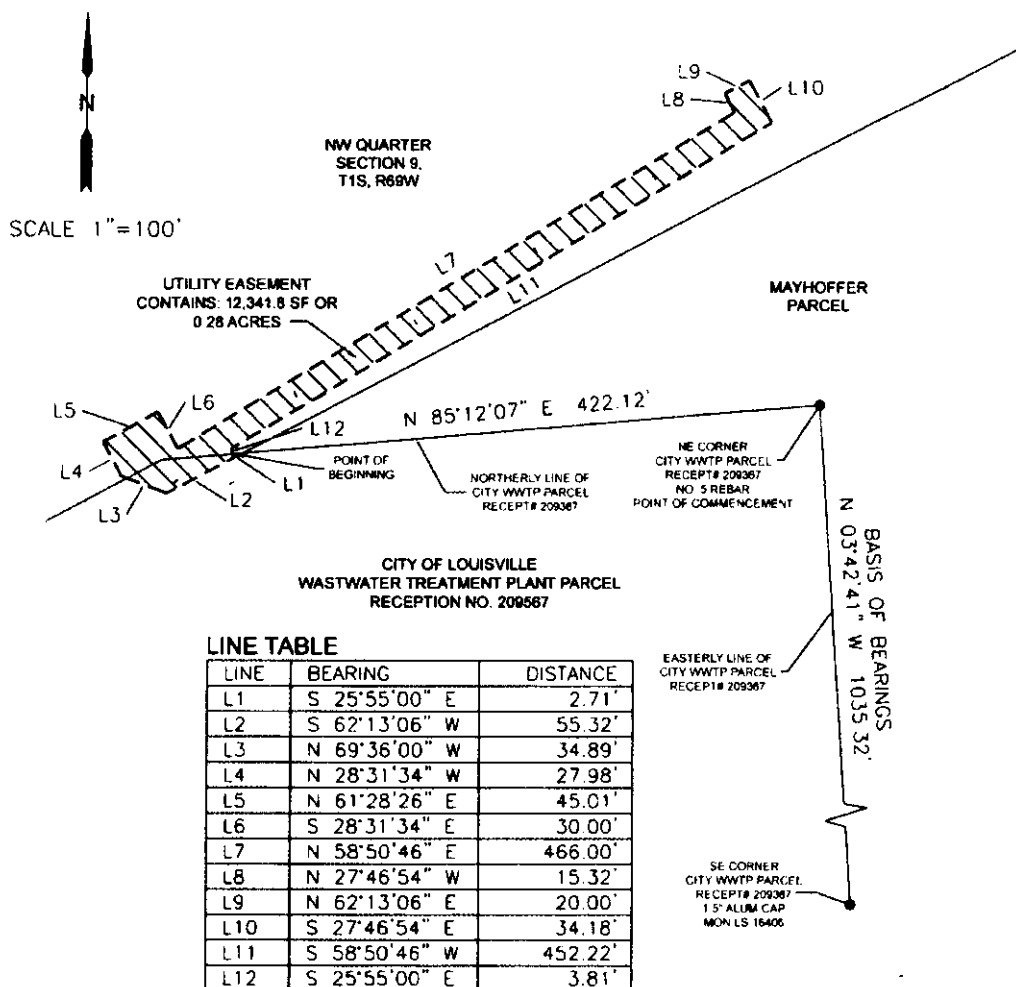




Harney Lastoka Maintenance Area

A UTILITY AND DRAINAGE EASEMENT LOCATED IN
THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH
PRINCIPAL MERIDIAN, CITY OF LOUISVILLE, COUNTY OF BOULDER, STATE OF COLORADO.

Page 1 of 2



NOTES:

- 1) THE PURPOSE OF THIS EXHIBIT IS TO DEPICT A UTILITY AND DRAINAGE EASEMENT FOR THE CITY OF LOUISVILLE CORE AREA OFFSITE DETENTION POND PROJECT
- 2) BOUNDARY INFORMATION FROM RECORD LAND SURVEY PLATS.
- 3) THIS EXHIBIT IS NOT A LAND SURVEY PLAT IN CONFORMANCE WITH CRS 38-51-106

ROCK CREEK SURVEYING, LLC
LAND SURVEYING SERVICES
3021 GARDENIA WAY
SUPERIOR, CO 80027
Phone: 303-521-7376

Prepared By:
ROBERT A. RICKARD, CO PLS 28283 Date: 08-13-2015

Harney Lastoka Maintenance Area**Page 2 of 2****EASEMENT LEGAL DESCRIPTION**

A UTILITY AND DRAINAGE EASEMENT OF VARIABLE WIDTH LOCATED IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS CONTAINED HEREIN ARE BASED ON THE ASSUMPTION THAT THE EASTERLY LINE OF THE CITY OF LOUISVILLE, EMPIRE ROAD WASTEWATER TREATMENT PLANT PARCEL RECORDED AS RECEPTION NO. 209367 AND AS SHOWN ON LAND SURVEY PLAT DATED MARCH 4, 2011 NO. LS-11-0048 AS BEARING N 03°42'41" W BETWEEN A NO. 5 REBAR WITH 1 5 INCH ALUMINUM CAP STAMPED LS 16406 AT THE SOUTHEASTERLY CORNER OF SAID PARCEL AND A NO. 5 REBAR AT THE NORTHEASTERLY CORNER OF SAID PARCEL.

COMMENCING AT THE NORTHEASTERLY CORNER OF THE CITY OF LOUISVILLE WASTEWATER TREATMENT PLANT PARCEL, RECORDED AS RECEPTION NO 209367;

THENCE S 85°12'07" W ALONG THE NORTHERLY LINE OF SAID WASTEWATER TREATMENT PLANT PARCEL A DISTANCE OF 422.12 FEET TO THE POINT OF BEGINNING;

THENCE THE FOLLOWING (12) COURSES AND DISTANCES

- 1) THENCE S 25°55'00" E A DISTANCE OF 2.71 FEET;
- 2) THENCE S 62°13'06" W A DISTANCE OF 55.32 FEET;
- 3) THENCE N 69°36'00" W A DISTANCE OF 34.89 FEET;
- 4) THENCE N 28°31'34" W A DISTANCE OF 27.98 FEET;
- 5) THENCE N 61°28'28" E A DISTANCE OF 45.01 FEET;
- 6) THENCE S 28°31'34" E A DISTANCE OF 30.00 FEET;
- 7) THENCE N 58°50'46" E A DISTANCE OF 466.00 FEET;
- 8) THENCE N 27°46'54" W A DISTANCE OF 15.32 FEET;
- 9) THENCE N 62°13'06" E A DISTANCE OF 20.00 FEET;
- 10) THENCE S 27°46'54" E A DISTANCE OF 34.18 FEET;
- 11) THENCE S 58°50'46" W A DISTANCE OF 452.22 FEET;
- 12) THENCE S 25°55'00" E A DISTANCE OF 3.81 FEET TO THE POINT OF BEGINNING.

EASEMENT CONTAINS: 12,341.8 SQUARE FEET OR 0.28 ACRES

PREPARED BY:

ROBERT A. RICKARD, PLS
COLORADO PROFESSIONAL LAND SURVEYOR NO. 28283
FOR AND ON BEHALF OF ROCK CREEK SURVEYING, LLC.
3021 GARDENIA WAY, SUPERIOR, CO 80027
PHONE: 303-521-7376

EXHIBIT C
TO DETENTION POND MAINTENANCE AND LICENSE AGREEMENT
(Maintenance Standards for Mowing and Trimming, Weed Control & Graffiti Control)

1. Mowing and Trimming

- a. The pond should be mowed and trimmed twice per year during the growing season or as needed to maintain an even level not greater than 12" high.
- b. The use of mulching mowers is encouraged. Excessive clippings that accumulate on the turf shall be removed and disposed of off-site.
- c. All mowing equipment shall be equipped with sharp blades so as not to tear, but cleanly cut the blades of grass.
- d. Rotary walk-behind or riding mowers are required for mowing. Mowers and trimmers shall be operated in a safe and orderly manner.
- e. Grass shall be cut in a professional manner so as not to scalp turf or leave uncut areas.
- f. Care shall be taken to prevent discharge of grass clippings into the storm drains or onto any paved surfaces such as streets, sidewalks, driveways, or adjacent properties. Any material so discharged shall be removed immediately.
- g. All trash and litter shall be removed from the site prior to initiating any mowing of the grass areas. Trash and litter shall be hauled from site and disposed of properly.
- h. All trimming shall be done using a string trimmer.
- i. All trimming shall be accomplished concurrently with the mowing operation and done at the same height as the adjacent grass.
- j. Special care shall be taken so as not to inflict damage to the bark of trees, fence posts, etc.

2. Weed Control

- a. Weeds shall be removed or killed as the weeds emerge.
- b. Weeds shall be removed if they are larger than two inches (2") in height or diameter and disposed of off-site.
- c. Precautions shall be taken to keep persons away from herbicide treated areas until the area is safe for entry. Herbicide applications shall be made at times when citizen presence is minimal.

- d. Pesticide flagging shall be placed prior to an application which shall include the company name, phone number, time and date of application and chemical applied on each flag. Flags shall be placed at all entrances and other highly visible areas throughout the site and shall be removed as soon as the area is safe for entry.
- e. All chemicals shall be used in accordance with label directions and the manufacturer's recommended handling methods. All governmental and industry recommendations and regulations apply.
- f. All pesticide applications shall be performed under the direction of a licensed applicator by the State of Colorado Department of Agriculture and in accordance with the Colorado Pesticide Applicator's Act. All City regulations and best management practices apply.
 - i. It is the contractor's responsibility to identify and properly notify any person listed on the Registry of Pesticide Sensitive Person whose property abuts that on which the application is scheduled before any pesticide application is performed.
 - ii. The contractor assumes full and complete responsibility for any undesirable plant kill or plant damage on the maintenance areas or adjacent property and for any adverse effects caused by pesticide applications.
 - iii. All pesticides recommended for use and all application of pesticides shall be reported to the Parks Superintendent.

3. Litter

- a. All hand litter and other debris shall be picked up in accordance to the mowing frequency. Litter and debris shall be picked up prior to mowing and hauled from the site.

4. Graffiti

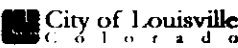
- a. Graffiti shall be removed within forty-eight hours from all surfaces such as: hard surfaces, retaining walls, exposed concrete, fencing, etc.
- b. All materials and processes used in removal shall be non-injurious to surfaces and adjacent property. If repainting is required, appropriate surface preparation shall be made on painted surfaces. Paint applied shall be the exact shade of color as existing paint.

5. Piping, Inlet Structures and Headwalls

- a. Provide pipe jetting and debris and silt removal as needed and as directed by the City. Piping shall not have a restriction greater than 20% based on depth.
- b. Provide flap gate inspection and maintenance in accordance with manufactures recommendations and as directed by the City.

EXHIBIT D TO DETENTION POND MAINTENANCE AND LICENSE AGREEMENT

Inspection Report Form

 City of Louisville DETENTION BASIN (DB) INSPECTION FORM	
Date: _____	
Subdivision/Business Name: _____	Inspector: _____
Subdivision/Business Address: _____	
Weather: _____	
Date of Last Rainfall: _____	Amount: _____ Inches
Property Classification: Residential Multi Family Commercial Other: _____ (Circle One)	
Reason for Inspection: Routine Complaint After Significant Rainfall Event (Circle One)	
INSPECTION SCORING - For each facility inspection item, insert one of the following scores. 0 = No deficiencies identified 2 = Routine maintenance required 1 = Monitor (potential for future problem) 3 = Immediate repair necessary N/A = Not applicable	
FEATURES	
1.) Inflow Points _____ Riprap Displaced _____ Erosion Present/Outfall Undercut _____ Sediment Accumulation _____ Structural Damage (pipe, end-section, etc.) _____ Woody Growth/Weeds Present	2.) Forebay _____ Sediment/Debris Accumulation _____ Concrete Cracking/Failing _____ Drain Pipe/Wier Clogged (not draining) _____ Wier/Drain Pipe Damage
3.) Trickle Channel (Low-flow) _____ Sediment/Debris Accumulation _____ Concrete/Riprap Damage _____ Woody Growth/Weeds Present _____ Erosion Outside Channel	4.) Bottom Stage (Micro-Pool) _____ Sediment/Debris Accumulation _____ Woody Growth/Weeds Present _____ Bank Erosion _____ Mosquitoes/Algae Treatment _____ Petroleum/Chemical Sheen
5.) Outlet Works _____ Trash Rack/Well Screen Clogged _____ Structural Damage (concrete, steel, subgrade) _____ Orifice Plate(s) Missing/Not Secure _____ Manhole Access (cover, steps, etc.) _____ Woody Growth/Weeds Present	6.) Emergency Spillway _____ Riprap Displaced _____ Erosion Present _____ Woody Growth/Weeds Present _____ Obstruction/Debris
7.) Upper Stage (Dry Storage) _____ Vegetation Sparse _____ Woody Growth/Undesirable Vegetation _____ Standing Water/Boggy Areas _____ Sediment Accumulation _____ Erosion (banks and bottom) _____ Trash/Debris _____ Maintenance Access	8.) Miscellaneous _____ Encroachment in Easement Area _____ Graffiti/Vandalism _____ Public Hazards _____ Burrowing Animals/Pests _____ Other
Inspection Summary / Additional Comments: _____	
OVERALL FACILITY RATING (Circle One) 0 = No Deficiencies Identified 2 = Routine Maintenance Required 1 = Monitor (potential for future problem exists) 3 = Immediate Repair Necessary	
This inspection form shall be kept a minimum of 3 years and made available to the City of Louisville upon request.	

**ASSIGNMENT OF DETENTION POND
MAINTENANCE AND LICENSE AGREEMENT**

(Delo Subdivision, City of Louisville)

THIS ASSIGNMENT OF DETENTION POND MAINTENANCE AND LICENSE AGREEMENT is made and entered into this ____ day of _____, 2024 by and between the CITY OF LOUISVILLE (the “City”), DELO APARTMENTS, LLC, a Colorado limited liability company (“Delo Apartments” or “Assignor”), and CT DELO, LLC, a Delaware limited liability company and HG DELO, LLC, a Delaware limited liability company (each an “Assignee” and collectively, “Assignees”).

WHEREAS, the City and Delo Apartments entered into that Detention Pond Maintenance and License Agreement dated August 4, 2017 (the “Agreement”), which Agreement was recorded with the Boulder County Clerk and Recorder on August 23, 2017 at Reception No. 03610786; and

WHEREAS, Section 3(b) of the Agreement requires Delo Apartments to inspect the Detention Pond and all facilities at least once every six months to ensure the Detention Pond and all associated BMPs function properly under the conditions for which they are designed, and Section 3(c) of the Agreement requires Delo Apartments to submit Inspection Reports to the City; and

WHEREAS, the City has not received Inspection Reports; and

WHEREAS, Section 19 of the Agreement required Delo Apartments to post with the City and maintain a cash deposit in the amount of Ten Thousand Dollars (\$10,000.00), for the purpose of Delo Apartments’ faithful performance of its maintenance obligations under the Agreement, which cash deposit has not been made by Delo Apartments; and

WHEREAS, Section 15 of the Agreement provides Delo Apartments may not assign the Agreement to any other party without the prior written approval of the City, and the City may require as part of any such approval that the successor execute its consent to such assignment to be bound by the terms and conditions of the Agreement and other applicable documents, and that such successor provide to the City a replacement Performance Guarantee prior to release of any Performance Guarantee then currently posted with the City; and

WHEREAS, Delo Apartments has requested the City approve assignment of the Agreement to Assignees in connection with the sale of property benefitted by the Agreement; and

WHEREAS, by this Agreement the City desires to approve such assignment and Assignees desire to accept such assignment, and each Assignee agrees to fulfill all obligations of the Agreement, including but not limited to the requirement to inspect the

Detention Pond and facilities, provide the City with copies of Inspection Reports, and provide and maintain a Performance Guarantee, all as required by the Agreement.

NOW, THEREFORE, in consideration of the recitals, promises, payments, covenants and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, the parties agree as follows:

1. The foregoing recitals are incorporated herein.
2. Delo Apartments hereby assigns, sets over and transfers unto Assignees all of its right, title and interest in and to and delegates all its obligations set forth in the Detention Pond Maintenance and License Agreement (the "Agreement") and Assignees hereby accept such assignment and assumes and agrees to perform all of the terms and covenants of the Agreement, including providing the Performance Guarantee required by the Agreement, performing inspections of the Detention Pond and facilities at least once every six months, and providing Inspection Reports to the City.
3. The City hereby approves the foregoing assignment and delegation, conditioned upon execution of this Assignment by all parties and further conditioned upon Assignees providing the cash Performance Guarantee required by the Agreement.
4. Delo Apartments and Assignees each agree to indemnify and hold harmless the City, its officers, employees, agents, and servants, and to pay any and all judgments rendered against said persons on account of any suit, action, or claim caused by, arising from, or on account of the acts or omissions or representations in this Assignment by each and their officers, employees, agents, consultants, contractors, and subcontractors or representations by each in this Assignment, and to pay to the City and said persons their reasonable expenses, including but not limited to reasonable attorney fees and reasonable expert witness fees, incurred in defending any such suit, action or claim; provided, however, that such obligation herein shall not apply to the extent said suit, action, or claim results from any acts or omissions of officers, employees, agents or servants of the City.
5. This Assignment may be executed in one or more counterparts, and when all counterparts are so signed, the sum of them shall be considered the original, and shall be deemed to have been signed as one integrated document.
6. The addresses for any notice pursuant to this Assignment or the Agreements shall be as follows:

City of Louisville
Attn: City Manager
749 Main Street
Louisville, CO 80027

with a copy to:
City of Louisville
Attn: City Attorney
749 Main Street
Louisville, CO 80027

Delo Apartments, LLC
Attn: Randall Bjerke
Gordon Sims
Scot Smith
3769 Orange Lane
Boulder, CO 80304

with a copy to:

CT Delo LLC
Attn: Ben Agin
390 Union Boulevard, Suite 150
Lakewood, CO 80228

with a copy to:
Fox Rothschild LP
Attn: Stephen Bohara
1225 17th Street, Suite 2200
Denver, CO 80202

HG Delo, LLC
Attn: Ben Agin
390 Union Boulevard, Suite 150
Lakewood, CO 80228

with a copy to:
Fox Rothschild LP
Attn: Stephen Bohara
1225 17th Street, Suite 2200
Denver, CO 80202

or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

IN WITNESS WHEREOF, the parties have executed this Assignment of Detention Pond Maintenance and License Agreement as of the date set forth above.

CITY OF LOUISVILLE, COLORADO

By: _____
Christopher M. Leh, Mayor

ATTEST:

Genny Kline, Interim City Clerk

ASSIGNOR:

DELO APARTMENTS, LLC,
a Colorado limited liability company

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____ as _____ of Delo Apartments, LLC

Witness my hand and official seal.

My commission expires: _____

ASSIGNEE:

CT Delo, LLC
a Delaware limited liability company

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____ as _____ of CT Delo, LLC.

Witness my hand and official seal.

My commission expires: _____

ASSIGNEE:

HG Delo, LLC
a Delaware limited liability company

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____ as _____ of HG Delo, LLC.

Witness my hand and official seal.

My commission expires: _____

EXHIBIT A
Legal Description

Lots 1, 2 and 3, Block 13; Lot 1, Block 14; Tracts A, B, C, D and E
Delo Subdivision – Replat No. 1
City of Louisville
County of Boulder
State of Colorado

Tract A
Industrial Area Subdivision Replat No. 1
City of Louisville
County of Boulder
State of Colorado

MAINTENANCE AND LICENSE AGREEMENT
(Delo Subdivision, City of Louisville)

THIS MAINTENANCE AND LICENSE AGREEMENT ("Agreement") is made and entered into this 3rd day of August, 2017, by and between the **CITY OF LOUISVILLE**, a Colorado home rule municipal corporation, in the County of Boulder, State of Colorado ("City"), and **DELO APARTMENTS, LLC**, a Colorado limited liability company ("Delo").

WHEREAS, the City has approved the following plats and plans for the Delo Subdivision ("Subdivision"), generally located west of State Highway 42 and east of the BNSF right-of-way between Griffith and South Streets in the City of Louisville: Delo Subdivision Plat dated October 3, 2014 and recorded at Reception No. 03406287 in the Office of the Boulder County Clerk and Recorder ("Boulder County Records"); Delo Final Planned Unit Development Phase 1 dated October 3, 2014 and recorded at Reception No. 03406288, Boulder County Records; Delo Subdivision – Replat No. 1 dated September 25, 2015 and recorded at Reception No. 03475556, Boulder County Records; Final Planned Unit Development Phase 2 dated September 9, 2015 and recorded at Reception No. 03475557, Boulder County Records; and Industrial Area Subdivision – Replat No. 1 dated September 18, 2015 and recorded at Reception No. 03474387, Boulder County Records (collectively, and as may be amended from time to time, the "Plans"); and

WHEREAS, in connection with the approval and recording of the Plans, the City and Takoda Properties, Inc. ("Takoda") entered into the Delo Subdivision Agreement dated October 2, 2014 and recorded at Reception No. 03406289, Boulder County Records ("Phase 1 SA") and the Delo Phase 2 Subdivision Agreement dated September 25, 2015 and recorded at Reception No. 0347555, Boulder County Records ("Phase 2 SA"); and

WHEREAS, pursuant to the provisions of Section 16.16.060.B of the Louisville Municipal Code, Takoda, as the Subdivider of the Subdivision, was required to dedicate land in the Subdivision to the City for park and public purposes; and

WHEREAS, Takoda satisfied the public use dedications required in connection with the Plans by: (1) dedicating to the City those certain outlots and rights-of-way identified and depicted on the Plans as Caledonia Plaza (Outlot A of Delo Replat No. 1); Nawatny Greenway (Outlots B, C of Delo Replat 1, Outlot 1 of Industrial Area Replat No. 1, and existing East Lafayette Street Right-of-Way); Cannon Street Public Right-of-Way; and the Cannon Street Woonerf; and (2) constructing and installing landscaping, hardscaping and other improvements in such areas; and

WHEREAS, the foregoing outlots, rights-of-way, landscaping, hardscaping and other improvements shall be referred to as the "Public Use Areas," which are further described and depicted on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the Phase 2 SA states that Takoda, its successor and assigns, shall be responsible for maintenance of the Public Use Areas and shall enter into a maintenance

agreement to further delineate perpetual maintenance responsibilities of the Public Use Areas; and

WHEREAS, Delo is the successor to Takoda, and the parties have mutually agreed that Delo shall be responsible for perpetual maintenance of the Public Use Areas and the City shall be responsible for certain capital repairs within the Public Use Areas; and

WHEREAS, the parties desire to enter into this Maintenance Agreement to further describe and delineate their respective maintenance and repair obligations.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

1. **Term.** This Agreement shall be effective on the date the City has issued its written Final Acceptance (as that term is defined in the Phase 2 SA) of the Public Use Areas and shall remain in effect until the date that the Public Use Areas cease to function and operate as public use areas as solely determined in writing by resolution of the City Council of the City (the "Maintenance Term").

2. **License.** The City hereby grants to Delo, its agents, employees and contractors a non-exclusive license to enter into, over, across, under and upon the Public Use Areas for the purpose of access, ingress, egress and all activities related to the maintenance of the Public Use Areas during the Maintenance Term. Except as specifically allowed by the Plans or other written approval of the City, Delo shall not place, build, expand, or add to any structures or other items on the Public Use Areas. Delo understands that the license granted hereunder is granted subject to prior franchise agreements and subject to all easements and other interests of record applicable to the Public Use Areas.

3. **Maintenance Obligations.** Delo, at its sole expense, shall be responsible for the following obligations with respect to the Public Use Areas:

A. Providing labor, tools, supervision, supplies, materials, equipment and any and all other items necessary to maintain the Public Use Areas in accordance with the maintenance table set forth at Exhibit B and the landscaping service standards set forth in Exhibit C, attached hereto and incorporated herein by reference, including performance of the specific maintenance tasks and obligations as noted on said Exhibits B and C, in order to maintain the life of the Public Use Areas.

B. Setting up water service accounts in its name and timely paying all charges for all water used in connection with the maintenance, upkeep and irrigation of the Public Use Areas, subject to the following: After Final Acceptance (as that term is defined in the Phase 2A), water consumption charges for water supplied for Caledonia Plaza (Outlot A of Delo Replat No. 1); Nawatny Greenway (Outlots B, C of Delo Replat 1, Outlot 1 of Industrial Area Replat No. 1, and existing East Lafayette Street Right-of-Way); and the Cannon Street Woonerf shall be paid for by the City up to an aggregate total amount of 742,395 gallons per year. Payment of water consumption charges for

water supplied for such lands exceeding 742,395 gallons per year shall be the responsibility of Delo. Total annual water consumption for such lands will be calculated by the City in December of each year. If the total consumption for the year exceeds 742,395 gallons, Delo shall pay the water consumption charges for the gallons used in excess of 742,395 gallons. Any such payment due shall be paid within 30 days of invoicing and shall be collectible in the same manner as other water utility charges required to be paid by Delo. If the total annual water consumption is less than 742,395 gallons, no credit will be provided. The above-stated annual water consumption amount to be paid by the City shall be subject to the adjustment in the event there is a material change in the water use requirements for such lands, or in conjunction with any proposed revisions to the landscaping or development plans for the City lands. In the event of conflict between this subsection 3.B and subsection 8.2(b) of the Phase 2A, this subsection 3.B shall control.

C. Taking such actions as necessary to maintain the Public Use Areas in a good, safe and usable condition at all times. Delo, its agents, employees and contractors shall comply at all times with the ordinances, resolutions, rules, and regulations of the City; with the terms, conditions and requirements of the approved Plans; and with the terms and conditions of this Agreement.

D. In the exercise of its obligations pursuant to this Agreement, Delo shall use commercially reasonable efforts to avoid any damage or interference with any City installations, structures, utilities, or improvements on, under, or adjacent to the Public Uses Areas. Delo shall restore any City facilities damaged by its activities permitted hereunder to the condition that existed immediately prior to the commencement of such activities.

E. If requested by the City, maintenance contractors or managers from Delo shall meet at least twice each year with the City in the Public Use Areas to inspect the Public Use Areas and review Delo's compliance with its maintenance obligations.

4. City Maintenance and Repair Obligations. The City shall be responsible for maintaining the Cannon Street Public Right of Way and Cannon Street Woonerf Right of Way except as set forth in Exhibit B. The City shall be responsible for completing capital repairs to improvements within the Public Uses Areas in accordance with the capital repair guidelines set forth at Exhibit D. For purpose of this Agreement, a "capital repair" shall mean a repair or replacement expense other than routine or periodic maintenance that is intended to materially extend the useful life of, or replace in its entirety, an improvement or portion thereof. Delo shall be responsible for timely notifying the City in writing of items needing capital repair and shall be responsible for immediately notifying the City as soon as possible after first learning of the need for capital repairs that involve a threat to public, health, safety and welfare. Notwithstanding the foregoing:

A. Delo shall be responsible at its expense for completing any repairs caused by the negligent acts or omissions or willful misconduct of Delo, its employees, agents and contractors.

B. The City shall be responsible for replacing shrubs, trees and turf if and only if the level of service standards set forth in Exhibit C are met or exceeded and replacement is needed.

C. The City shall have no obligation to repair or replace improvements within City rights of way with non-City standard finishes or enhancements unless Delo or a party or parties other than the City advances the additional costs for such non-City standard finishes or enhancements. (For example, and for illustrative purposes only, if a portion of colored concrete within the Cannon Street right-of-way needs to be removed and replaced, the City shall replace such portion with non-colored concrete unless the additional costs for colored concrete finish are advanced to the City.)

The City's maintenance and repair obligations for Public Use Areas shall be limited to those obligations expressly set forth in this Agreement. In the event of disagreement between or among the City, Delo and/or owner of property described in Exhibit E attached hereto regarding maintenance or repair responsibility for any improvement(s) in the Public Use Areas not expressly addressed in this Agreement, Delo shall be responsible for the maintenance or repair of such improvement(s) unless the City, by written instrument signed by the City Manager, agrees to be responsible for maintenance and/or repair of the improvement(s) as specified in such written instrument.

5. Open to Public. Delo agrees and acknowledges the Public Use Areas are public areas open to the public and that nothing herein gives Delo the right to restrict or exclude any person or entity from the Public Use Areas. If Delo needs to close the Public Use Area for a period of more than four (4) hours for public safety reasons in order to perform its maintenance obligations, it shall first obtain the City's written approval.

6. Breach. If Delo fails to comply with its obligations relating to the Public Use Areas, such noncompliance shall constitute a breach of this Agreement. The City, in addition to any other remedy available to it for breach, shall have the right but not the obligation to take such measures as it determines necessary to bring the Public Use Areas into compliance with this Agreement, and the cost of any such measures shall be paid by Delo. Except during an emergency, the City shall provide written notice to Delo, not to be less than fifteen (15) days, and allow Delo the opportunity to perform such measures. If Delo fails to perform such measures within the time prescribed and to the City's satisfaction, upon providing Delo at least five (5) business days' notice, the City may cause such measures to be taken and bill the actual and reasonable cost thereof to Delo, including without limitation all costs for labor, material and equipment used to complete such measures, accompanied by reasonable evidence of such expenditures. The cost of any such measures shall be paid by Delo within 30 days of written demand for payment thereof. Any amounts not so paid shall bear interest at the rate of 0.5% per month from the date the demand was received until paid, and the City shall be entitled to all costs of collection to collect such amounts, including but not limited to court costs and reasonable attorney fees. Further, any such amounts owing to the City may be billed in the same manner and in conjunction with charges to Delo for water service provided in connection with the Public Use Areas.

Further, upon a failure of Delo to maintain the Public Use Areas, the City shall have the right, pursuant to C.R.S. § 24-67-105(c), as from time to time amended, to maintain the Public Use Areas and assess the costs thereof upon real property described on Exhibit E attached hereto, in accordance with said section and applicable law. For purposes of this Agreement, Delo agrees the improvements within the Public Use Areas required to be maintained by Delo constitute "common open space" as defined in C.R.S. § 24-67-103(1), as amended from time to time.

The City shall also have the right to the remedy of injunctive relief to compel performance of the obligations of this Agreement. All remedies of the City shall be cumulative and the exercise of one remedy shall not preclude the City from pursuing other remedies for the same breach or any other breach of the same section or any other sections of this Agreement.

7. **Performance Guarantee.** Prior to the commencement of the Maintenance Term, Delo shall procure, post with and maintain for the Maintenance Term, a cash deposit with the City in the amount of Ten Thousand dollars (\$10,000.00) ("Performance Guarantee"), for the purpose of assuring Delo's faithful performance of its maintenance obligations under this Agreement. If Delo fails to perform its maintenance obligations and fail to pay the City's costs for performing such maintenance obligations, after notice from the City, as described in Section 6 above, the City may use funds from the Performance Guarantee for such costs. Upon demonstrated consistent compliance with the maintenance obligations in this Agreement for a period of five years after the commencement of the Maintenance Term, Delo may apply to the City for a return of the Performance Guarantee, which shall not be unreasonably withheld by the City; provided, however, that if the City approves a return of the Performance Guarantee, it may in connection therewith require the substitution of a performance bond for continued faithful performance of Delo's maintenance obligations under this Agreement. Any interest accrued on the Performance Guarantee shall accrue to the City. The Performance Guarantee required by this Agreement may not be combined with any other Performance Guarantee.

8. **Maintenance Districts.** This Agreement shall not preclude the establishment of one or more special taxing districts, assessment districts or other mechanisms for maintaining, repairing, operating or replacing improvements in the Public Use Areas, in accordance with applicable law.

9. **City's Reservation of Rights.** The City reserves the right to use and occupy the Public Use Areas for any purpose of the City. Delo, for itself, its successors and assigns, hereby releases the City, its officers and employees from any and all claims of damage or liability for any disturbance of or damage to the Public Use Areas resulting from the City's use of the Public Use Areas, excepting only liability arising from gross negligence or willful or wanton conduct by the City, its officers and/or employees.

10. **Personal Property.** The City shall have no responsibility, liability, or obligation with respect to the safety or security of any personal property of Delo placed or located on, at, or in the Public Use Areas, it being acknowledged and understood by Delo that the safety and security of any such property is the sole responsibility and risk of Delo.

11. Insurance.

A. Delo shall each procure and maintain, and cause each of its subcontractors performing work on the Public Use Areas to procure and maintain, the minimum insurance coverages listed below. All coverages shall be maintained to cover all liability, claims, demands, and other obligations pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such coverage.

1. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in any activity on the Public Use Areas under the employ or at the instance of Delo, its agents or contractors.

2. General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate.

3. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per person in any one occurrence and ONE MILLION DOLLARS (\$1,000,000) for two or more persons in any one occurrence, and auto property damage insurance of at least FIFTY THOUSAND DOLLARS (\$50,000) per occurrence, with respect to each of Delo's owned, hired or non-owned vehicles assigned to or used in any activities at the Public Use Areas or permitted under this Agreement.

B. The policies required above, except for the Workers' Compensation insurance, shall be endorsed to include the City, and its officers and employees, as additional insureds with primary coverage as respects the City, its officers and its employees, and shall contain a severability of interests provision. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be in excess and not contributory insurance to that provided by Delo. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The insurance holder shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by the insurance holder's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. Each certificate shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy.

D. Failure on the part of Delo to procure and maintain and to cause its subcontractors to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of Delo's obligations hereunder, for which the City may immediately terminate or limit Delo's rights hereunder, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Delo to the City upon demand.

Section 12. Indemnification. Except for liability resulting from City's gross negligence or willful or wanton misconduct, Delo shall be solely responsible for all damages to persons or property which may in whole or part be caused by Delo or its agents, employees or contractors, or which may result or arise in whole or part from their activities on the Public Use Areas, and Delo will indemnify and hold harmless the City, its elected and appointed officials, and its employees, agents and representatives, from any and all liability, damage, loss, cost or expense, including but not limited to reasonable attorney fees, which the City, its elected and appointed officials, and its employees, agents and representatives may suffer as a result of any and all claims, demands, actions, costs or judgments made or brought against them by any person or entity, and which arise either in whole or in part from, or are in any way connected with, Delo's activities within the Public Use Areas, or with this Agreement or the rights and obligations of Delo hereunder. By demanding this right to indemnification, the City in no way waives or intends to waive the limitations on liability or other protections which are provided to the City and its employees under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et. seq.

Section 13. Police Powers Retained. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the City's ordinances or resolutions, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants.

Section 14. Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, sent by national overnight courier or United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

CITY:

City of Louisville
City Manager
749 Main Street
Louisville, CO 80027

DELO:

Delo Apartments, LLC
c/o Justin McClure
1002 Griffith Street
Louisville, CO 80027

or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon personal delivery, receipt of facsimile transmission, or upon mailing (if sent by overnight courier or United States mail) in compliance with this paragraph.

Section 15. Other Maintenance Obligations. Nothing in this Agreement is intended or shall be construed to limit or affect any other maintenance obligations for other Outlots and Tracts within the Subdivision. This Agreement is limited solely to the Public Use Areas as set forth herein.

Section 16. No Joint Venture or Partnership. No form of joint venture or partnership exists between the City and Delo, and nothing contained in this Agreement shall be construed as making the City and Delo joint venturers or partners.

Section 17. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City, Delo, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on this Agreement. It is the express intention of the parties that any person other than the City, Delo receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 18. No Property Interest. Delo agrees it does not have or claim, and shall not at any time in the future have or claim, any ownership interest or estate in the Public Use Areas, or any other interest in real property included in the Public Use Areas, by virtue of this Agreement or by virtue of its occupancy or use of the Public Use Areas.

Section 19. Binding Effect of Agreement. This Agreement shall run with the land described on Exhibit E attached hereto and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

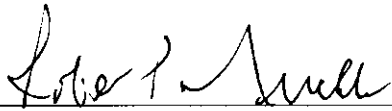
Section 20. Assignment, Delegation and Notice. This Agreement, or any part of this Agreement, may not be assigned by Delo to any other party without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City may require as part of any such approval that the successor execute its consent to such assignment to be bound by specified terms and conditions hereof and other applicable documents.

Section 21. Modification and Waiver. No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

Section 22. Authority. The undersigned warrant to have full power and authority to enter into this Agreement.

Section 23. Severability. This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that any provision of the Agreement is held to be violative of the City, state, or federal laws and hereby rendered unenforceable, the City, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

CITY OF LOUISVILLE,
a Colorado home rule municipal corporation

By: 
Robert P. Muckle, Mayor

ATTEST:

By: 
Meredyth Muth, City Clerk



DELO APARTMENTS, LLC,
a Colorado limited liability company

By: 
Justin McClure, Manager

ACKNOWLEDGEMENT

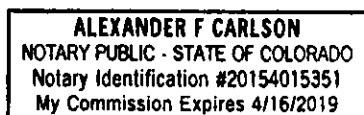
STATE OF COLORADO)
)ss
COUNTY OF BOULDER)

The above and foregoing signature of Justin McClure as Manager of Delo Apartments, LLC was subscribed and sworn to before me this 3 day of August, 2017.

Witness my hand and official seal.

My commission expires on: 4.16.19

(SEAL)



Alexander Carlson
Notary Public

Exhibit A Description of Public Use Areas

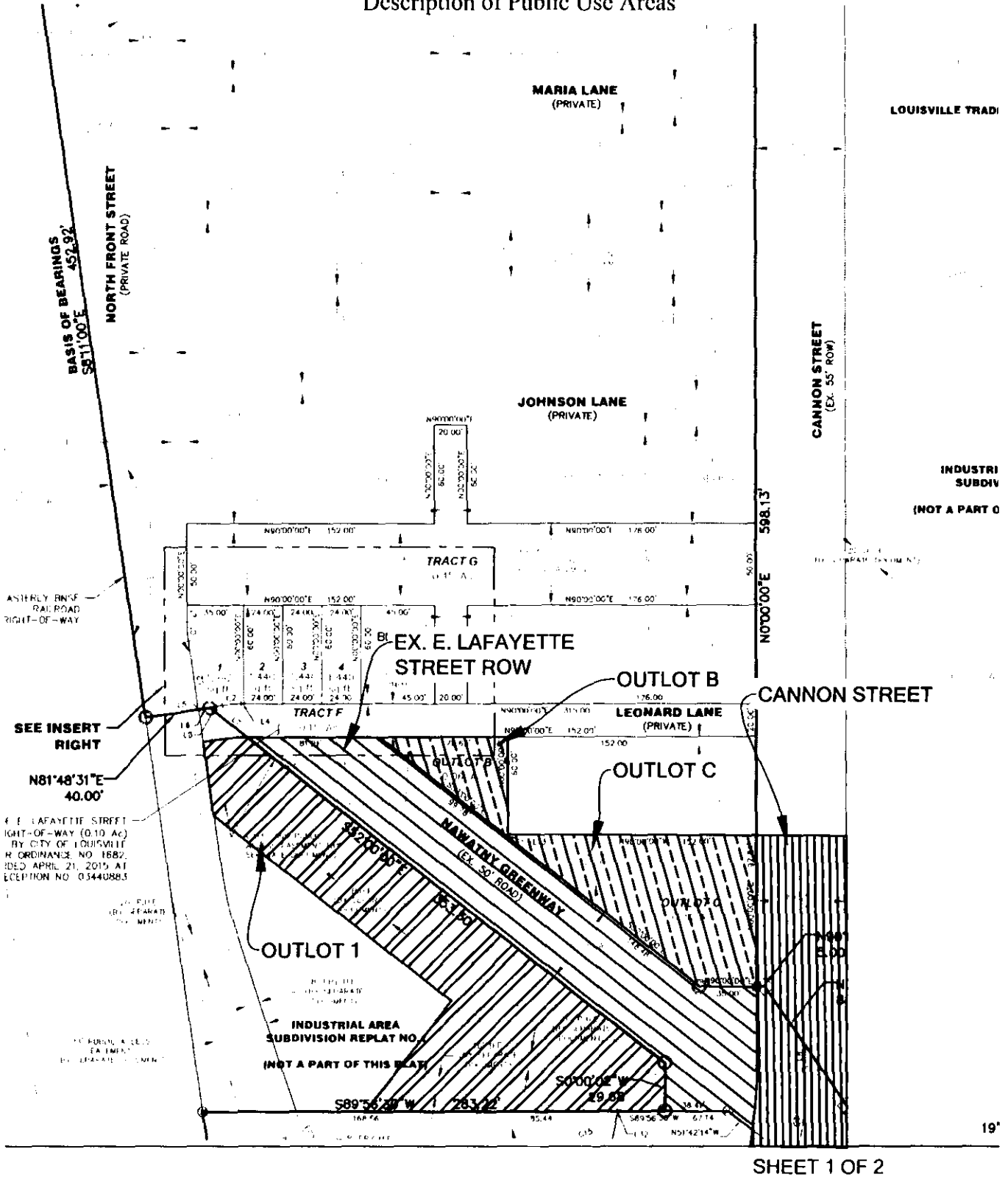


Exhibit C Level of Service Standards

All maintenance on public properties shall be conducted according to current City of Louisville standards and include but not limit to the following.

Mowing and Trimming

Turf areas should be mowed and trimmed weekly during the growing season or as needed to maintain an even, well-groomed appearance. Turf grass should be kept at a height of approximately three inches.

The use of mulching mowers is encouraged. Excessive clippings that accumulate on the turf must be removed and disposed of off-site.

All mowing equipment shall be equipped with sharp blades so as not to tear, but cleanly cut the blades of grass.

Rotary walk-behind or riding mowers are required for mowing. Mowers and trimmers must be operated in a safe and orderly manner.

Turf shall be cut in a professional manner so as not to scalp turf or leave uncut areas.

Care shall be taken to prevent discharge of grass clippings into the storm drains or onto any paved surfaces such as streets, sidewalks, driveways, or adjacent properties. Any material so discharged shall be removed immediately.

All trash and litter shall be removed from the site prior to initiating any mowing of the turf areas. Trash and litter shall be hauled from site.

All trimming shall be done using a string trimmer.

All trimming must be accomplished concurrently with the mowing operation and done at the same height as the adjacent turf.

Special care shall be taken while trimming so as not to inflict damage to the bark of trees, fence posts or boards, signs, etc.

Edging

All sidewalks, curbs, walkways and other hard surfaces will be mechanically edged using a metal blade as necessary in order to maintain a well-groomed appearance. All material dislodged by edging will be removed from site.

Aeration

Common turf areas shall be aerated once in the spring and once in the fall. Each aeration shall be done in a cross type pattern (two different directions) with a commercial type aerator having a plug depth set at six inches (6").

Weed Control

Suckers are classified as weeds. Adventitious sucker growth from trees in tree wells shall be removed weekly using pruning shears. Shears will be sterilized with isopropyl alcohol or an approved disinfectant between cuts. Chemically treating suckers is not allowed.

Weeds shall be removed or killed as the weeds emerge in the following areas: landscaped areas, shrub beds, mulched areas (wood and rock), sidewalks and pattern concrete.

Weeds shall be removed if they are larger than two inches (2") in height or diameter and disposed of off-site.

Trees wells will be sprayed a minimum of three (3) times during the growth season with glyphosate.

Precautions shall be taken to keep persons away from herbicide treated areas until the area is safe for entry. Herbicide applications shall be made at times when citizen presence is minimal.

Pesticide flagging will be placed prior to an application which will include the company name, phone number, time and date of application and chemical applied on each flag. Flags shall be placed at all entrances and other highly visible areas throughout the site and will be removed as soon as the area is safe for entry.

All chemicals shall be used in accordance with label directions and the manufactures recommended handling methods. All governmental and industry recommendations and regulations apply.

Broadleaf treatment of weeds on turf shall occur but not to exceed two (2) times per growing season.

All pesticide applications must be performed under the direction of a licensed applicator by the State of Colorado Department of Agriculture and in accordance with the Colorado Pesticide Applicator's Act. All City regulations and best management practices apply.

It is the contractor's responsibility to identify and properly notify any person listed on the Registry of Pesticide Sensitive Person whose property abuts that on which the application is scheduled before any pesticide application is performed.

The contractor assumes full and complete responsibility for any undesirable plant kill or plant damage on the maintenance areas or adjacent property and for any adverse effects caused by pesticide applications.

All pesticides recommended for use and all application of pesticides must be reported to the Parks Superintendent.

Litter

All hand litter and other debris shall be picked up in accordance to the mowing frequency. Litter and debris shall be picked up prior to mowing and hauled from the site. Trash shall also be removed from shrub beds, landscaped areas, mulched areas and sidewalks.

Trash and recycling cans shall be emptied at a minimum of twice per week or as many times per week as needed.

Pet pick-up dispensers should be restocked weekly or as needed.

Fertilizing

Fertilization applications shall be performed once in the spring after the aeration has been performed and once in the fall after the aeration has been performed. The formulation and application rate will be determined by a soil test. Fertilizer should be a slow release type.

If the fertilizer contains iron it must be removed from all concrete surfaces to avoid staining. The fertilizer formulation and application rate must be reported to the Parks Superintendent.

Irrigation

It is expected that the systems will be energized in the spring and winterized in the fall. Heads are to be adjusted as needed, breaks repaired timely to prevent any interruptions in the watering cycles for all landscaping.

Routine maintenance on the system components shall occur weekly.

Heads must be adjusted for optimal coverage. Nozzles are to be free of debris and valves are to be functioning properly.

Any replacement parts must be of the same brand, model number and nozzle size.

Backflows must be tested yearly by a certified tester. Test documentation must be completed and submitted to the City.

Appropriate watering practices must be followed for each specific type of plant material and turf species. Day watering is only allowed for grass establishment.

Use of a rain sensor is required. Irrigation must be turned off during a rain event.

A rain event is defined as an event in which accumulation exceeds two-tenths of an inch (.2") of water in a twenty-four hour period.

Pruning

All trees, shrubs and plant material shall be maintained to ensure the health, vigor and aesthetic appearance according to accepted horticultural practices.

Shrub growth shall be maintained in accordance with present space limitations to ensure natural appearance.

Damaged trees or those that constitute health or safety hazards shall be pruned immediately.

Tree pruning shall include sidewalk and street clearance.

All tree pruning shall be conducted by a certified arborists.

Questions or disputes regarding pruning shall be referred to the City
Forester and his/her decision will prevail

Mulching

All areas containing mulch will be kept at a depth of four inches to discourage the growth of any plant material deemed undesirable.

Annual Flower Beds

Annual flower beds will have the soil turned once a year in the fall before new flowers are planted.

All flowers will be dead headed on an as need basis.

Site Amenities

Inspections should occur weekly and reports made available upon request.

General care and upkeep should occur as needed for site amenities such as: benches, bike racks, trash and recycling receptacles, signs, pet pick-up dispensers, etc.

Graffiti

Graffiti shall be removed within forty-eight hours from all surfaces such as: walkways, hard surfaces, benches, tables, boulders, retaining walls, signage, lighting, fencing, etc.

All materials and processes used in removal shall be non-injurious to surfaces and adjacent property. If repainting is required, appropriate surface preparation shall be made on painted surfaces. Paint applied shall be the exact shade of color as existing paint.

Sidewalks, Walkways, and Hardscapes

Sidewalks, walkways and hardscapes shall be swept and/or blown weekly or as needed to keep free from debris. All liters shall be picked up and removed.

All expansion joints and cracks shall be kept weed free at all times.

Any accumulation of snow shall be removed from all concrete walkways.

Snow or ice must be removed within twenty-four hours from the last accretion of such snow or ice per City ordinance.

Exhibit D Capital Repair Schedule

Exhibit D

Delo Phase 2 Subdivision - City of Louisville Capital Repair After Final Acceptance

PROJECT		IMPROVEMENT	CAPITAL REPAIR
Outlot A (Caldonia Plaza)	Landscape	Replace shrubs, trees and turf if and only if the level of service is agreed upon in Exhibit C is met and/or exceeded.	
	Structures and site furnishings	Replace arbor, benches, bike repair station, light fixtures, electrical outlets, tables, chairs, trash receptacles and play element at City discretion.	
	Public walk and other concrete work	Concrete walk or other concrete replacement per Public Works/Parks and Recreation evaluation, procedure and practice. No non-City standard finishes will be used unless Delo or another party advances to the City all costs for the non-City standard finish.	
Outlot B (Newatny Greenway)	Landscape	Replace shrubs, trees and turf if and only if the level of service is agreed upon in Exhibit C is met and/or exceeded.	
	Public walk and other concrete work	Concrete walk or other concrete replacement per Public Works/Parks and Recreation evaluation, procedure and practice. No non-City standard finishes will be used unless Delo or another party advances to the City all costs for the non-City standard finish.	
Outlot C (Newatny Greenway)	Landscape	Replace shrubs, trees and turf if and only if the level of service is agreed upon in Exhibit C is met and/or exceeded.	
	Public walk and other concrete work	Concrete walk or other concrete replacement per Public Works/Parks and Recreation evaluation, procedure and practice. No non-City standard finishes will be used unless Delo or another party advances to the City all costs for the non-City standard finish.	
Existing East Lafayette Street ROW (Newatny Greenway)	Landscape	Replace shrubs, trees and turf if and only if the level of service is agreed upon in Exhibit C is met and/or exceeded.	
	Structures and site furnishings	Replace arbor, light fixtures, electrical outlets and park sign at City discretion.	
	Public walk and other concrete work	Concrete walk or other concrete replacement per Public Works/Parks and Recreation evaluation, procedure and practice. No non-City standard finishes will be used unless Delo or another party advances to the City all costs for the non-City standard finish.	
	Landscape (West ROW)	Replace shrubs, trees and turf if and only if the level of service is agreed upon in Exhibit C is met and/or exceeded.	
	Wet Utility	Repair /replace water, sanitary sewer and storm sewer facilities per Public Works evaluation, procedure and practice.	
Cannon Street Public Right of Way	Street lighting	Replace street lighting per Public Works evaluation, procedure and practice.	
	Public street, walk and other concrete work	Asphalt pavement per Public Works evaluation, procedure and practice. Concrete walk or other concrete replacement per Public Works/Parks and Recreation evaluation, procedure and practice. No non-City standard finishes will be used unless Delo or another party advances to the City all costs for the non-City standard finish.	
Cannon Street Woonerf Public Right of Way	Landscape	Replace shrubs, trees and turf at City discretion.	
	Street furnishings	Replace benches, bike bags, detectable warning plates, electrical outlets and tree grates at City discretion.	
	Wet utility	Repair /replace water, sanitary sewer and storm sewer facilities excluding trench drain and lateral piping per Public Works evaluation, procedure and practice.	
	Trench Drain and Lateral Piping	Capital replacement only.	
	Street lighting	Replace /replace street lighting per Public Works evaluation, procedure and practice.	
	Public street and walk	Concrete walk or other concrete replacement per Public Works/Parks and Recreation evaluation, procedure and practice. No non-City standard finishes will be used unless Delo or another party advances to the City all costs for the non-City standard finish.	
	Landscape	Replace shrubs, trees and turf if and only if the level of service is agreed upon in Exhibit C is met and/or exceeded.	
Outlot 1	Street lighting	Repair /replace street lighting per Local Economy evaluation, procedure and practice.	
	Structures and site furnishings	Replace arbor, benches, light fixtures, electrical outlets and trash receptacles at City discretion.	
	Public walk and other concrete work	Concrete walk or other concrete replacement per Public Works/Parks and Recreation evaluation, procedure and practice. No non-City standard finishes will be used unless Delo or another party advances to the City all costs for the non-City standard finish.	

Exhibit E
Delo Apartments Property Description

PARCEL A:

LOTS 1, 2 AND 3, BLOCK 13, AND LOT 1, BLOCK 14, AND TRACTS A, B, C, D, AND E,
DELO SUBDIVISION- REPLAT NO.1, COUNTY OF BOULDER, STATE OF COLORADO.

PARCEL B:

TRACT A, INDUSTRIAL AREA SUBDIVISION REPLAT NO. 1 RECORDED SEPTEMBER
18, 2015 UNDER RECEPTION NO. 03474387, COUNTY OF BOULDER, STATE OF
COLORADO.

**ASSIGNMENT OF
MAINTENANCE AND LICENSE AGREEMENT**

(Delo Subdivision, City of Louisville)

THIS ASSIGNMENT OF MAINTENANCE AND LICENSE AGREEMENT is made and entered into this ____ day of _____, 2024 by and between the CITY OF LOUISVILLE (the "City"), DELO APARTMENTS, LLC, a Colorado limited liability company ("Delo Apartments" or "Assignor"), and CT DELO, LLC, a Delaware limited liability company and HG DELO, LLC, a Delaware limited liability company (each an "Assignee" and collectively, "Assignees").

WHEREAS, the City and Delo Apartments entered into that Maintenance and License Agreement dated August 3, 2017 (the "Agreement"), which Agreement was recorded with the Boulder County Clerk and Recorder on August 23, 2017 at Reception No. 03610787; and

WHEREAS, Section 7 of the Agreement required Delo Apartments to post with the City and maintain a cash deposit in the amount of Ten Thousand Dollars (\$10,000.00), for the purpose of Delo Apartments' faithful performance of its maintenance obligations under the Agreement, which cash deposit has not been made by Delo Apartments; and

WHEREAS, Section 20 of the Agreement provides Delo Apartments may not assign the Agreement to any other party without the prior written approval of the City, and the City may require as part of any such approval that the successor execute its consent to such assignment to be bound by the terms and conditions of the Agreement and other applicable documents; and

WHEREAS, Delo Apartments has requested the City approve assignment of the Agreement to Assignees in connection with the sale of property benefitted by the Agreement, and by this Agreement the City desires to approve such assignment and Assignees desire to accept such assignment and each Assignee agrees to fulfill all obligations of the Agreement, including the requirement to provide and maintain a Performance Guarantee as required by the Agreement.

NOW, THEREFORE, in consideration of the recitals, promises, payments, covenants and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, the parties agree as follows:

1. The foregoing recitals are incorporated herein.
2. Delo Apartments hereby assigns, sets over and transfers unto Assignees all of its right, title and interest in and to and delegates all its obligations set forth in the Maintenance and License Agreement (the "Agreement") and Assignees hereby accept

such assignment and assumes and agrees to perform all of the terms and covenants of the Agreement.

3. The City hereby approves the foregoing assignment and delegation, conditioned upon execution of this Assignment by all parties and further conditioned upon Assignees providing the cash Performance Guarantee required by the Agreement.

4. Delo Apartments and Assignees each agree to indemnify and hold harmless the City, its officers, employees, agents, and servants, and to pay any and all judgments rendered against said persons on account of any suit, action, or claim caused by, arising from, or on account of the acts or omissions or representations in this Assignment by each and their officers, employees, agents, consultants, contractors, and subcontractors or representations by each in this Assignment, and to pay to the City and said persons their reasonable expenses, including but not limited to reasonable attorney fees and reasonable expert witness fees, incurred in defending any such suit, action or claim; provided, however, that such obligation herein shall not apply to the extent said suit, action, or claim results from any acts or omissions of officers, employees, agents or servants of the City.

5. This Assignment may be executed in one or more counterparts, and when all counterparts are so signed, the sum of them shall be considered the original, and shall be deemed to have been signed as one integrated document.

6. The addresses for any notice pursuant to this Assignment or the Agreements shall be as follows:

City of Louisville
Attn: City Manager
749 Main Street
Louisville, CO 80027

with a copy to:
City of Louisville
Attn: City Attorney
749 Main Street
Louisville, CO 80027

Delo Apartments, LLC
Attn: Randall Bjerke
Gordon Sims
Scot Smith
3769 Orange Lane
Boulder, CO 80304

with a copy to:

CT Delo LLC
Attn: Ben Agin
390 Union Boulevard, Suite 150
Lakewood, CO 80228

with a copy to:
Fox Rothschild LLP
Attn: Stephen Bohara
1225 17th Street, Suite 220
Denver, CO 80202

HG DeLo, LLC
Attn: Ben Agin
390 Union Boulevard, Suite 150
Lakewood, CO 80228

with a copy to:
Fox Rothschild LLP
Attn: Stephen Bohara
1225 17th Street, Suite 2200
Denver, CO 80202

or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

IN WITNESS WHEREOF, the parties have executed this Assignment of Maintenance and License Agreement as of the date set forth above.

CITY OF LOUISVILLE, COLORADO

By: _____
Christopher M. Leh, Mayor

ATTEST:

Genny Kline, Interim City Clerk

ASSIGNOR:

DELO APARTMENTS, LLC,
a Colorado limited liability company

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____ as _____ of Delo Apartments, LLC

Witness my hand and official seal.

My commission expires: _____

ASSIGNEE:

CT Delo, LLC
a Delaware limited liability company

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____ as _____ of CT Delo, LLC.

Witness my hand and official seal.

My commission expires: _____

ASSIGNEE:

HG Delo, LLC
a Delaware limited liability company

By: _____

Title: _____

ACKNOWLEDGMENT

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____ as _____ of HG Delo, LLC.

Witness my hand and official seal.

My commission expires: _____

EXHIBIT A
Legal Description

Lots 1, 2 and 3, Block 13; Lot 1, Block 14; Tracts A, B, C, D and E
Delo Subdivision – Replat No. 1
City of Louisville
County of Boulder
State of Colorado

Tract A
Industrial Area Subdivision Replat No. 1
City of Louisville
County of Boulder
State of Colorado