

AFTER RECORDING, RETURN TO:

J. Marcus Painter, Esq.
Holland & Hart LLP
1800 Broadway, Suite 300
Boulder, CO 80302

**TRASH DISPOSAL ADDENDUM TO FIRST AMENDED
AND RESTATED RECIPROCAL EASEMENT
AND MAINTENANCE AGREEMENT**

THIS TRASH DISPOSAL ADDENDUM TO FIRST AMENDED AND RESTATED RECIPROCAL EASEMENT AND MAINTENANCE AGREEMENT (this "**Addendum**"), is made this 14th day of January 2011, by and between Penny Flats, LLC, a Colorado limited liability company ("**Penny Flats**"), and Penny Flats Condominium Association, Inc., a Colorado nonprofit corporation (the "**Association**").

RECITALS


A. WHEREAS, Penny Flats is the owner of that certain parcel of real property located at 210 Maple Street, Fort Collins, Colorado, known as Lot 1A, Penny Flats Subdivision, City of Fort Collins, Colorado ("**Lot 1A**", the diagram and legal description for which is set out at **Exhibit A** of the First Amended and Restated Reciprocal Easement and Maintenance Agreement dated November 15, 2010 and recorded in the Larimer County Clerk and Recorder's Records on November 18, 2010 as Reception No. 20100071717 (the "**REMA**")) and in such capacity Penny Flats shall be referred to herein as the "**Lot 1A Owner**";

B. WHEREAS, Penny Flats is the owner of that certain parcel of real property located at 311 N. Mason Street, Fort Collins, Colorado, known as Lot 1B, Penny Flats Subdivision, City of Fort Collins, Colorado ("**Lot 1B**", the diagram and legal description for which is set out at **Exhibit B** to the REMA) and in such capacity shall be referred to herein as the "**Lot 1B Owner**". Lot 1A Owner and Lot 1B Owner are individually and collectively referred to herein as an "**Owner**";

C. WHEREAS, the Association is a condominium association charged with the maintenance of that certain parcel of real property and improvements located at 204 Maple Street, Fort Collins, Colorado, known as Lot 1, Penny Flats Subdivision, City of Fort Collins, Colorado more particularly described ("**Lot 1**" or the "**Association Property**", the diagram and legal description for which is set out at **Exhibit C** of the REMA). The Association Property, together with the Lot 1A and Lot 1B, are referred to herein jointly as the "**Properties**" or "**Lots**" or, individually as a "**Property**" or a "**Lot**";

D. WHEREAS, capitalized terms used herein shall have the same meaning as set forth or referenced in the REMA unless otherwise defined herein.

E. WHEREAS, the Parties have determined that it is in their mutual best interest at this time to permit the Lot 1A and Lot 1B Owners to dispose of their respective trash generated

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by the commercial and residential buildings to be constructed thereon in the exterior trash facility already in place on the Association Property, as currently located on Lot 1 as indicated on **Exhibit D**, attached hereto and incorporated herein.

F. WHEREAS, the Lot 1A Owner, the Lot 1B Owner and the Association each agree and desire to establish the reciprocal rights and obligations with respect to such trash disposal and provide for the easements necessary for the continued access to Lot 1 by Lots 1A and 1B for such trash disposal, all as set forth below and subject to the following;

G. WHEREAS, pursuant to § 38-33.3-116(2), the Easement granted hereunder is between three lots and the areas encompassed by the Easement are not for residential purposes but rather for access and infrastructure and therefore it is the intent hereof that this Addendum be an easement only and not be construed in any manner as expressly or impliedly creating a separate common interest community subject to the Act; and

H. WHEREAS, the parties desire that the rights and responsibilities hereunder be construed broadly to effectuate the intent that the current and future owners of the Properties and the occupants of the Properties have the right of use and the responsibility for maintenance of the Easement hereunder and those reasonably implied or necessary as if the Properties had been developed as part of a single condominium association.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lot 1A Owner, Lot 1B Owner and the Association agree as follows:

1. Trash Disposal Access Easement.

a. Grant of Trash Disposal Access Easement. The Association hereby grants and conveys to the Lot 1A Owner and the Lot 1B Owner, for the benefit of and appurtenant to Lot 1A and Lot 1B, a perpetual, non-exclusive, easement for vehicular and pedestrian access (as appropriate where vehicles are lawfully permitted) for disposal of trash from the buildings constructed on Lots 1A and 1B, over and upon that portion of the Association Property and in the trash area and dumpster generally described in and depicted on **Exhibit D** attached hereto (the "Trash Disposal Easement").

b. Permitted Use. The Trash Disposal Easement may be used by the Lot 1A Owner and the Lot 1B Owner (individually a "**Party**" and collectively "**Parties**") and their respective employees, agents, condominium owners, tenants, visitors and invitees (collectively, "**Invitees**"), for lawful disposal of foreseeable household and business trash typically generated in the normal use and business operations of the approved uses of the buildings erected on Lots 1A and 1B. Such disposal shall not include any materials, products, compounds or other items forbidden from disposal in the Association Property's trash dumpster by local, state or federal law, or by rules and regulations adopted by the Association with respect to trash disposal (so

long as such rules and regulations are reasonable, do not unreasonably interfere with the proper and permitted uses of the Properties, and which are equally enforceable against the occupants of the improvements on the Association's Lot). The Trash Disposal Easement shall be used in a manner which will not unreasonably interfere with the primary purpose of the same or any other reciprocal easement, right or obligation arising under the REMA. The Trash Disposal Easement shall not be used for storage or any other use other than the periodic disposal and retention of common trash of the occupants and permitted users of the Properties, and such other uses as may be permitted, required or implied hereunder or under the Plat as the same may be amended from time to time for the Properties.

c. Relocation of Trash Disposal Easement. The Association shall have the right to redesignate or relocate the dumpster and any trash enclosure on the Association's Lot, and thereby modify and relocate the Trash Disposal Easement as necessary, after obtaining the consent of the Lot 1A and 1B Owners, which consent shall not be unreasonably withheld. Withholding of consent shall be deemed unreasonable if the redesignation or relocation of the dumpster, trash enclosure and Trash Disposal Easement does not materially prevent or hinder the use of the same by, and is not materially less convenient to, Lot 1A or Lot 1B as intended hereunder. If a Party does not either give or withhold consent within thirty (30) days after any request by any other Party to redesignate or relocate the dumpster, trash enclosure and/or the Trash Disposal Easement, as applicable, such Party shall be deemed to have consented to such redesignation or relocation. Any notice requesting a redesignation or relocation shall: (i) include a description of the proposed new location, and (ii) the probable commencement and completion dates of the relocation. Any redesignation or relocation shall be at the requesting Party's sole cost and expense. The Party requesting the relocation shall indemnify the other Parties for all damages, losses, costs (including, without limitation, attorneys' fees), claims, demands, suits, judgments, and other obligations arising out of or connection in any way with such relocation, including, without limitation, the Utilities Improvements installed or otherwise affected by such relocation.

d. Cost Allocation. Weekly or periodic trash hauling and service expenses shall be allocated between the Properties based on a weighted percentage where the numerator is the number of finished commercial and residential units on a given Property, and the denominator is the total number of finished commercial and residential units among all of the Properties. The Trash Disposal Easement is for use only in association with such finished units and is not for purposes of construction activities and disposal with respect to the development of buildings on any of the Properties. The Association shall bill the Lot 1A and the Lot 1B Owners their proportionate share on a monthly basis with copies of the billings on which the allocation is based. The Lot 1A and Lot 1B owners shall pay their respective billed amount within twenty (20) days of receipt, such payment to be made directly to the Association as directed by the Association. If buildings on Lot 1A or Lot 1B are completed at different times, the owner of the Property with the first building completed shall pay as an annual easement and administrative fee, \$750 per year. Upon completion of a building on the other Property, both the Lot 1A Owner and the Lot 1B Owner shall pay an easement and administrative fee of \$600 per year per Property. Such fee shall be in addition to the periodic cost allocation for trash service referenced above. Such easement and administrative fee shall be paid on or before January 15 of each year,

provided, however, that in the event a building is completed after January 15 of any year, upon such completion, such Owner shall immediately pay the applicable easement and administrative fee prorated for the remainder of such year. Such rental fee shall increase, if at all, on January 1, 2012 and every January 1 thereafter, by the amount of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) for Denver, Colorado Metropolitan Area, All Items (1982-1984=100) (the "Index"). If the United States Bureau of Labor Statistics shall discontinue the issuance of the Index, then the rental readjustments provided for in this Addendum shall be made on the basis of changes in the most comparable and recognized cost-of-living index then issued and available which is published by the United States government. For the purposes of this Section 1(d), completion of a building will be deemed to have occurred upon the issuance of a certificate of occupancy or equivalent by the City of Fort Collins or the applicable agency for all or any portion of such building.

e. Continuous Provision of Access to Trash Receptacle. The Parties acknowledge and agree that the improvements (both existing and planned) on each Property are required to have access to adequate trash facilities and that the development on Lots 1A and 1B is being undertaken in reliance upon the Association's agreement hereunder to provide and maintain adequate trash receptacle availability for the foreseeable capacity requirements for such Properties.

f. Damage and Repair. Should the dumpster or trash enclosure on the Trash Disposal Easement be damaged or destroyed by the intentional act, gross negligence or negligence of a Party, its successors or assigns, or its or their respective employees, tenants, agents, guests, licensees or invitees, such Party shall immediately repair the same at such Party's sole cost and expense.

2. Regulation of the Trash Disposal Easement. The Parties agree hereunder that the Trash Disposal Easement shall be included in the definition of the Easement Area under the REMA and shall be subject to all rights, obligations, maintenance responsibilities and assessments applicable to the Easement Area, except as may be specifically provided in this Addendum.

3. Application of REMA Provisions. The provisions of the Addendum are supplemental to those terms in the REMA, and are intended to effect an inclusion in the REMA of this Trash Disposal Easement as an additional Easement thereunder, subject to the recitals and terms applicable to Easements in general under the REMA. Except as specifically provided to the contrary herein, the terms of the REMA apply hereto and remain in full force and effect.

This Agreement is intended to take effect as of the date set forth above.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the Parties have set their hands effective the day and year first written above.

“Lot 1A Owner ” and “Lot 1B Owner”

PENNY FLATS, LLC, a Colorado limited liability company



By: _____
Name: John A. Koval
Title: MANAGER

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

^{BP} The foregoing instrument was acknowledged before me this 13th day of January, 2010 by John A. Koval, as Manager of Penny Flats, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 6-26-2012


BRENDA D. QUINTANA
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 06/26/2012

Brenda D. Quintana
Notary Public

"The Association"

PENNY FLATS CONDOMINIUM ASSOCIATION,
INC., a Colorado nonprofit corporation,

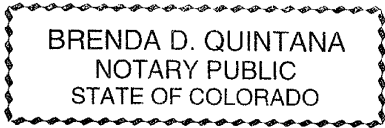
By: 
Name: John A. Koval
Title: PRESIDENT

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

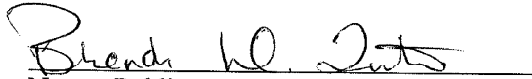
The foregoing instrument was acknowledged before me this 13th day of
January, 2010 by John A. Koval, as President, of Penny Flats
Condominium Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 6-26-2012

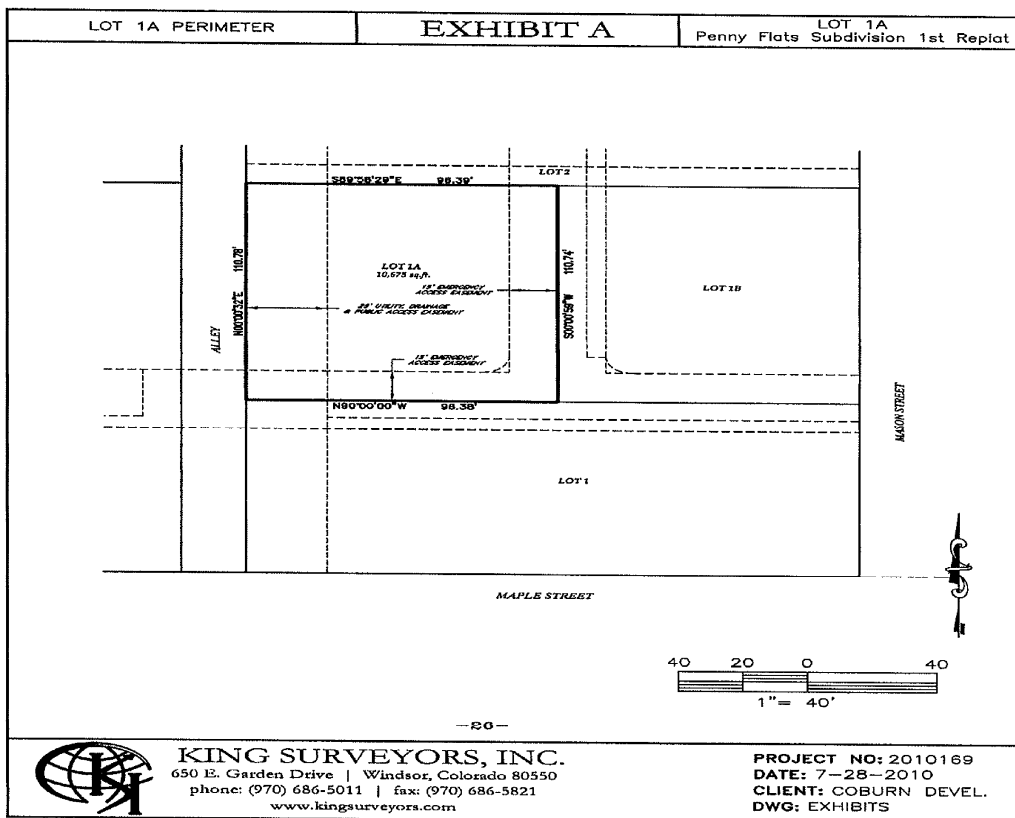


My Commission Expires 06/26/2012


Notary Public

RECEPTION#: 20110003693, 01/14/2011 at 10:32:34 AM, 7 OF 13, Scott Doyle,
Larimer County, CO

Exhibit A
Lot 1A Per the Penny Flats Subdivision First Replat
recorded November 2, 2010, at Reception Number 20100067556.



RECEPTION#: 20110003693, 01/14/2011 at 10:32:34 AM, 9 OF 13, Scott Doyle,
Larimer County, CO

Exhibit B
Lot 1B Per the Penny Flats Subdivision First Replat
recorded November 2, 2010, at Reception Number 20100067556.

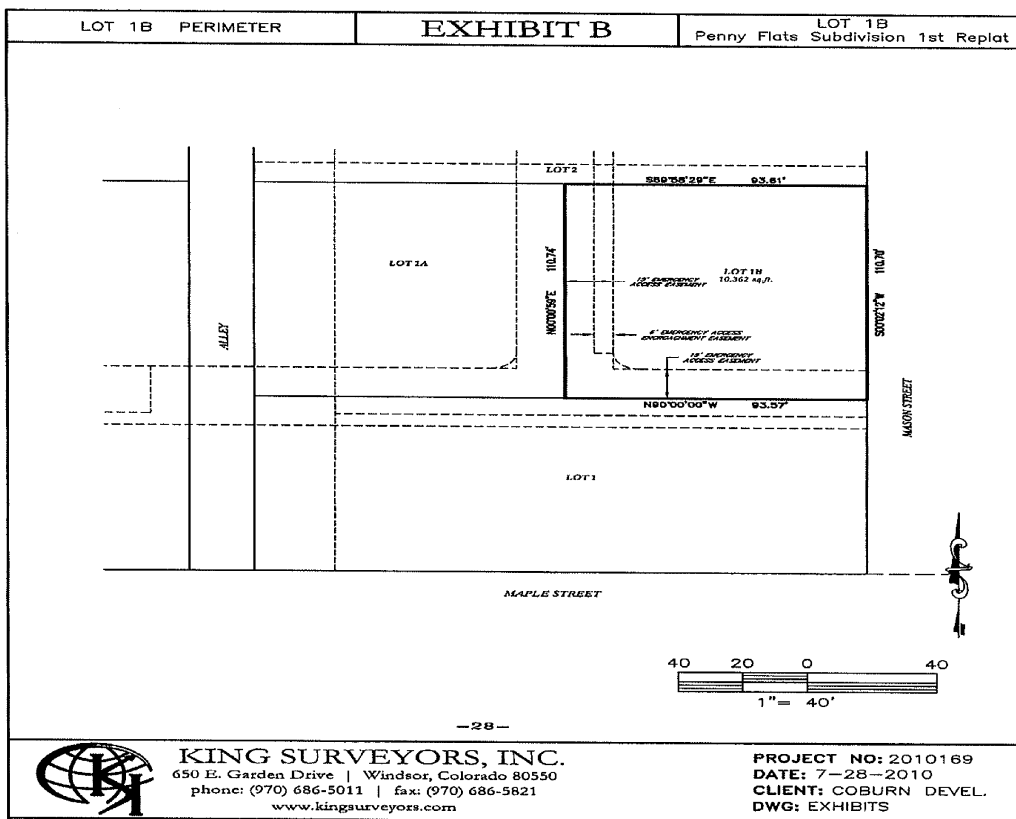


Exhibit C

**Lot 1, except Lots 1A and 1B Per the Penny Flats Subdivision First Replat
recorded November 2, 2010, at Reception Number 20100067556, Penny Flats Subdivision,
Recorded at Reception Number 20070007427.**

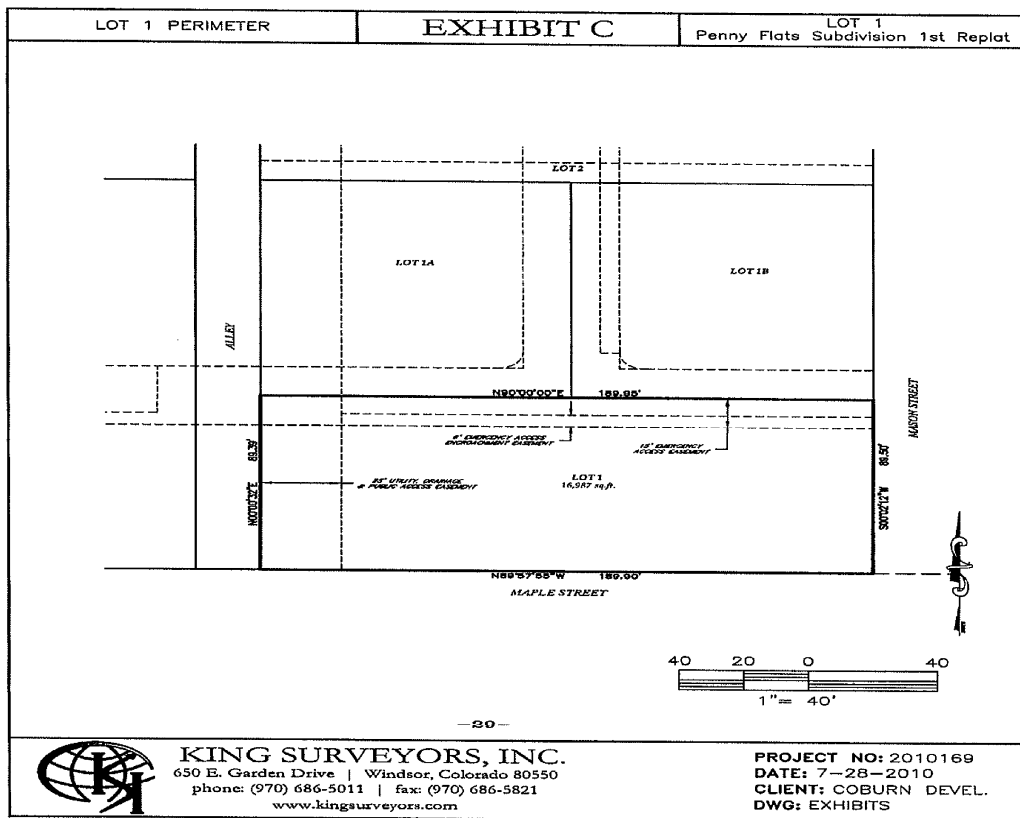
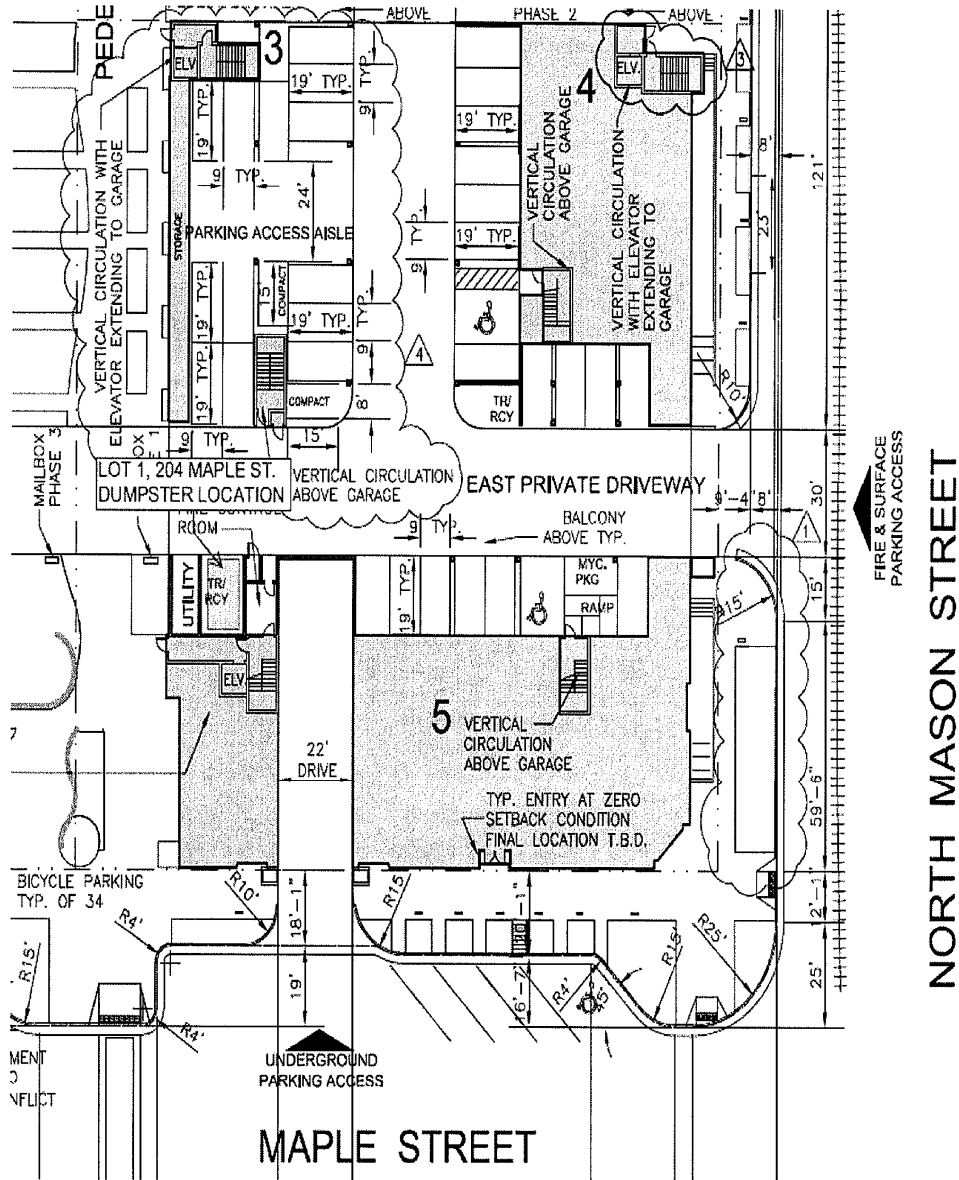


Exhibit D
Trash Disposal Easement and Diagram



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