



**FIRST AMENDMENT TO  
OPERATION AND EASEMENT AGREEMENT  
(Highland Meadows)**

THIS FIRST AMENDMENT TO OPERATION AND EASEMENT AGREEMENT (Highland Meadows) ("First Amendment") is made and entered into as of the 31st day of October, 2005, among GIRL SCOUTS - MOUNTAIN PRAIRIE COUNCIL, a Colorado non-profit corporation; COUNTY ROAD 5, LLC, a Colorado limited liability company; WINDSOR ICE HOUSE, LLC, a Colorado limited liability company; the TOWN OF WINDSOR, COLORADO; DAYSRING CHRISTIAN CHURCH, a Colorado non-profit corporation; HILLSIDE COMMERCIAL GROUP, INC., a California corporation; DOUBLE EAGLE CONDOMINIUM ASSOCIATION, a Colorado nonprofit corporation; and BETTER BUSINESS BUREAU OF NORTHERN COLORADO FOUNDATION, a Colorado nonprofit corporation ("the Owners").

**WITNESSETH:**

WHEREAS, the Owners are the current record owners of all of the following described real property in the Town of Windsor, County of Larimer, State of Colorado ("the Commercial Center"):

Lots 1-6, inclusive, Block 11 Corrected Highland Meadows Subdivision Third Filing ("Lots 1-6"); Tract A Highland Meadows Subdivision First Filing ("Tract A"); and Tract B, Corrected Highland Meadows Subdivision Third Filing ("Tract B").

WHEREAS, the Owners previously entered into an Operation and Easement Agreement (Highland Meadows) recorded August 13, 2003 at Reception No. 2003-0103131 and re-recorded September 28, 2004, at Reception No. 2004-0094871 of the Larimer County, Colorado records ("the OEA").

WHEREAS, the Owners desire to amend and modify certain terms and provisions of the OEA. Capitalized terms used in this First Amendment, unless otherwise specifically defined herein, shall have the meaning given in the OEA.

WHEREAS, by this First Amendment, the Owners intend to separate the maintenance of that portion of the Common Area located on Tracts A and B from the maintenance of that portion of the Common Area located on Lots 1-6. The Owners of Tracts A and B shall each maintain that portion of the Common Area located on their respective Tracts as provided in Article IV, Sections 2(a) and (e) of the OEA without contribution from any other Owner; and the Owners of Lots

*[Signature]*  
**Liley, Rogers & Martell, LLC**  
300 S. Howes Street  
Ft. Collins, CO 80521

1-6 shall maintain that portion of the Common Area located on Lots 1-6 as provided in Article IV, Sections 2(a) and (e) of the OEA, and shall apportion the cost of maintaining that portion of the Common Area located on Lots 1-6 among the Owners of Lots 1-6 pursuant to Article IV, Sections 2(b), (c) and (d) of the OEA, as amended by this First Amendment.

WHEREAS, the Owner of Tract A, the Owner of Tract B, and the Owners of Lots 1-6, collectively and individually, acknowledge that the Common Area on their respective Tracts or Lots remain subject to the terms of the OEA, as modified herein, for the mutual benefit of all Owners, Occupants and Permittees.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth and in furtherance of the parties' understanding, it is agreed as follows:

1. Tracts A and B shall **NOT** be subject to any of the terms, covenants, conditions or provisions contained within Article IV, Sections 2(b), (c) and (d) of the OEA. For purposes of Article IV, Sections 2(b), (c) and (d) of the OEA, the Common Area shall be limited to that portion of the Common Area located on Lots 1-6 and Common Area Maintenance Costs shall be limited to the cost of maintaining that portion of the Common Area located on Lots 1-6.

2. Article IV, Section 2(d) of the OEA is hereby deleted in its entirety and restated and replaced as follows:

- (d) The Maintenance Costs for that portion of the Common Area located on Lots 1-6 and the Administrative Fee shall be allocated as provided in this subparagraph (d) only among the Owners of Lots 1-6. For purposes of allocating the Maintenance Costs and Administrative Fee among the Owners of Lots 1-6, the term "Improved Lot" shall mean a Lot (within Lots 1-6) upon which a building has been constructed for which a temporary or permanent certificate of occupancy either has been issued or would be issued if requested. The determination of which Lots are Improved Lots shall be made by the Operator on January 1 of each year based on whether a temporary or permanent certificate of occupancy was issued for a building on the Lot during the preceding calendar year. The determination of which Lots are improved shall remain in effect until January 1 of the following year, at which time the Operator shall once again determine which, if any, Lots

are to be considered Improved Lots. (In further clarification and by way of example, if a temporary certificate of occupancy for a building on a Lot is issued on February 1, the Lot shall not be considered an Improved Lot until January 1 of the following year.)

So long as only one (1) of Lots 1-6 is improved, the Improved Lot shall pay 25.71% of the Common Area Maintenance Costs (the cost of maintaining that portion of the Common Area located on Lots 1-6) and 25.71% of the Administrative Fee; and the balance of the Common Area Maintenance Costs and Administrative Fee shall be divided equally among the five unimproved Lots.

As additional Lots become Improved Lots, the Common Area Maintenance Costs and the Administrative Fee shall be allocated among Lots 1-6 as follows:

# of Improved Lots	Percentage of Common Area Maintenance Costs and Administrative Fee Allocated to Each Improved Lot
2	21.42
3	20.00
4	18.57
5	17.85

The balance of the Common Area Maintenance Costs and Administrative Fee shall be allocated equally among the remaining unimproved Lots.

When all six Lots become Improved Lots (when a temporary or permanent certificate of occupancy has been issued for a building on each of the six Lots, or would have been issued if requested, with the determination of which Lots are Improved Lots made by the Operator on January 1 of each year), then the Common Area Maintenance Costs (the cost of maintaining that portion of the Common Area located on Lots 1-6) and the Administrative Fee shall be allocated among the Owners of Lots 1-6 based upon the number of

gross square feet within the building on each Owner's Lot. Each Owner's share of the Common Area Maintenance Costs and Administrative Fee shall be determined by multiplying the total of the Common Area Maintenance Costs and Administrative Fee by a fraction, the numerator of which shall be the number of gross square feet within the building located on such Owner's Lot or Lots, and the denominator of which shall be the total number of gross square feet within all of the buildings located on Lots 1-6.

The Owner of each of Lots 1-6 shall pay to the Operator in equal monthly payments, in advance, the share of the Common Area Maintenance Costs and the Administration Fee attributable to its Lot as hereinabove provided based either on the amount set forth in the approved Budget, or if a Budget is not approved, then the monthly payment established for the prior year. Within 45 days after the end of each calendar year, the Operator shall provide each Owner with a statement certified by an authorized Person, together with supporting invoices and other materials setting forth the actual Common Area Maintenance Costs paid by it for the operation and maintenance of that portion of the Common Area located on Lots 1-6, plus the Administration Fee, and the share of the aggregate thereof that is attributable to such Owner's Lot. If the amount paid with respect to a Lot for such calendar year shall have exceeded the share properly allocable to such Lot, the Operator shall refund the excess to the Owner owning such Lot at the time such certified statement is delivered, or if the amount paid with respect to a Lot for such calendar year shall be less than the share allocable to such Lot, the Owner owning such Lot at the time such certified statement is delivered shall pay the balance of the Lot's share to the Operator within 30 days after receipt of such certified statement.

3. The cost of maintaining, repairing, improving and replacing Schooner Lane between Larimer County Road #5 and Highland Meadows Parkway ("Schooner Lane") including, but not limited to, the cost of snow removal, shall be paid 50% by the Owners of Tracts A and B (the Owner of Tract A shall pay 25%, and the Owner of Tract B shall pay 25%), and 50% by the

Owners of Lots 1-6. (One-half of the cost of the maintenance, repair, improvement and replacement of Schooner Lane shall be allocated among and paid by the Owners of Lots 1-6 in the same manner that the Common Area Maintenance Costs for that portion of the Common Area located on Lots 1-6 are allocated as provided in Article IV, Section 2(d) of the OEA, as amended by this First Amendment.)

The necessity for and the reasonableness of the cost of, the maintenance, repair, improvement and/or replacement of Schooner Lane shall be determined by mutual agreement of the Owners of Tracts A and B acting as one party, and the Owners of Lots 1-6 acting as the other party. (The Owners of Lots 1-6 shall act by vote of the Owners of a majority of Lots 1-6 with each Owner entitled to votes equal to their respective percentage of Common Area Maintenance Costs and the Administrative Fee then paid.)

The Town of Windsor shall not be responsible for providing snow plowing service within any portion of Schooner Lane. Further, the Town of Windsor shall not be held responsible for the cost of restoring any damage to Schooner Lane occasioned by the use of heavy equipment by its subcontractors, it being understood that said subcontractors shall be held separately responsible by the Town of Windsor for such restoration under separate contracts with the Town of Windsor.

Nothing herein contained shall be construed as in any way modifying, restricting or limiting the extent of the reciprocal, non-exclusive easements over, across and upon all Common Area (including, without limitation, Common Area located on Tracts A and B) as set forth in Article II of the OEA.

4. Article V, Section 1 of the OEA is hereby deleted in its entirety and restated and replaced as follows:

1. **Insurance.** Each of the Owners of Lots 1-6 and the Owner of Tract A shall maintain in full force and effect Commercial General Liability Insurance covering each such Owner's Lot or Tract with a combined single limit of liability of One Million Dollars in Constant Dollars for bodily injury, personal injury, and property damage arising out of any one occurrence; all of the Owners shall be "named insureds" on each policy.

5. Article VI, Section 8(e) is hereby deleted in its entirety and restated and replaced as follows:

- (e) This OEA may be amended as follows:
- (i) Any provision of this OEA except Article IV, Sections 2(b), (c) and (d) may be amended by, and only by, a written agreement signed by the Representative of the Owner of Tract A, the Representative of the Owner of Tract B, and the Representatives of the Owners of a majority of the Owners of Lots 1-6 with each Owner entitled to votes equal to their respective percentage of Common Area Maintenance Costs and the Administrative Fee then paid.
  - (ii) Article IV, Sections 2(b), (c) and/or (d) may be amended by, and only by, a written agreement signed by the Representatives of the Owners of sixty-seven percent (67%) of Lots 1-6 with each Owner entitled to votes equal to their respective percentage of Common Area Maintenance Costs and the Administrative Fee then paid..
  - (iii) Any two or more Owners may enter into separate agreements (a "Supplement") dealing with the ownership of their respective Lots as to each other, but no such Supplement shall in any way bind or in any way whatsoever affect the rights of any Owner not executing the Supplement.
  - (iv) No amendment to this OEA shall impose any materially greater obligation on, or materially impair any right of, an Owner or its Lot without the consent of such Owner, including but not limited to the grant of easement for ingress, egress and parking as set for in OEA, Article II, Section 1, or the obligation to maintain Common Area as set for in OEA, Article IV, Section 2 (a).
  - (v) No consent to any amendment of this OEA shall ever be required of any Occupant or Person other than the Owners, nor shall any Occupant or Person other than the Owners have any right to enforce any of the provisions of this OEA.

- (vi) Each Owner may consider, approve or disapprove any proposed amendment to this OEA in its sole and absolute discretion without regard to reasonableness or timeliness.

6. This First Amendment may be executed in several counterparts, each of which shall be deemed an original. The signatures to this First Amendment may be executed and notarized on separate pages and, when attached to this First Amendment, shall constitute one complete document.

7. Nothing contained in this First Amendment shall be deemed to constitute a waiver of the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, or subsequent amendments thereto, otherwise available to the Town of Windsor, its elected officials, officers or employees. The obligations of the Town of Windsor herein shall be subject to ongoing approval and appropriation of revenues, and shall not be deemed binding upon future Town Boards absent such approval and appropriation.

8. Except as expressly amended or modified herein, all other terms and provisions of the OEA shall remain the same and are expressly ratified and affirmed by the parties hereto. In the event of any conflict between the terms and provisions of this First Amendment and the terms and provisions of the OEA, the terms and provisions of this First Amendment shall control.

9. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

PLEASE SEE NEXT PAGES FOR SIGNATURES

IN WITNESS WHEREOF, the Owners have executed this First Amendment to the Operation and Easement Agreement (Highland Meadows) as of the day and year first above written.

GIRL SCOUTS-MOUNTAIN PRAIRIE COUNCIL, a Colorado non-profit corporation

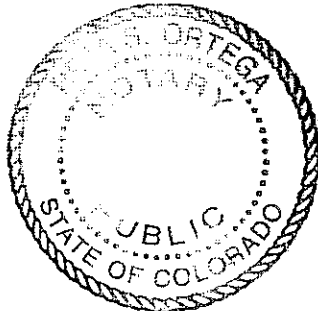
By: *Michelle Bellows*  
Name: *Michelle Bellows*  
Title: *President, Board of Directors*

STATE OF COLORADO        )  
  )ss:  
COUNTY OF LARIMER        )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of September, 2005, by Michelle Bellows as President of GIRL SCOUTS-MOUNTAIN PRAIRIE COUNCIL, a Colorado non-profit corporation.

Witness my hand and official seal.

My Commission Expires:



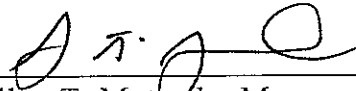
*R. Ortega*  
Notary Public

~~My Commission Expires 10/12/2006~~



IN WITNESS WHEREOF, the Owners have executed this First Amendment to the Operation and Easement Agreement (Highland Meadows) as of the day and year first above written.

COUNTY ROAD 5, LLC,  
a Colorado limited liability company

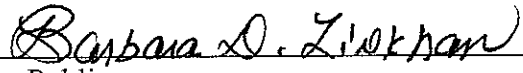
By:   
Allen T. Matsuda, Manager

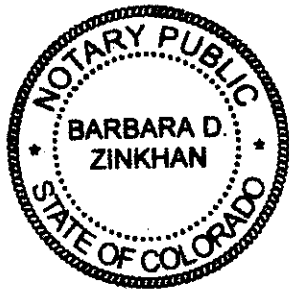
STATE OF COLORADO        )  
  )ss:  
COUNTY OF LARIMER        )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of October, 2005, by Allen T. Matsuda, Manager of COUNTY ROAD 5, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission Expires: 5-28-2006

  
Notary Public





IN WITNESS WHEREOF, the Owners have executed this First Amendment to the Operation and Easement Agreement (Highland Meadows) as of the day and year first above written.

TOWN OF WINDSOR, COLORADO

By: *Edward Starck*  
Name: Edward Starck  
Title: Mayor

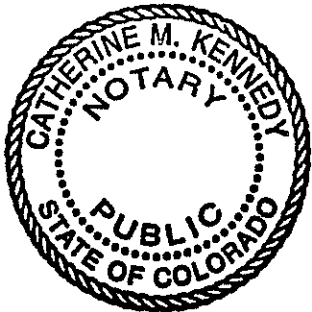
STATE OF COLORADO            )  
  )ss:  
COUNTY OF LARIMER         )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of September, 2005, by EDWARD STARCK as MAYOR of the TOWN OF WINDSOR, COLORADO.

Witness my hand and official seal.

My Commission Expires: 11/15/05

*Catherine M Kennedy*  
Notary Public



My Commission Expires 11/15/2005

TOWN OF WINDSOR

RESOLUTION NO. 2005- 84

COPY

BEING A RESOLUTION RATIFYING, APPROVING, AND CONFIRMING THE TERMS AND CONDITIONS OF THE FIRST AMENDMENT TO OPERATION AND EASEMENT AGREEMENT, HIGHLAND MEADOWS COMMUNITY RESOURCE PARK ASSOCIATION.

IT IS HEREBY RESOLVED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

1. That the Town of Windsor is the owner of Tract B, Corrected Highland Meadows Subdivision, Third Filing, and is a member of the Highland Meadows Community Park Resource Association ("Association").

2. That the Town of Windsor was a signatory to the Operation and Easement Agreement recorded August 13, 2003, recorded at Reception No. 2003-0103131 of the Larimer County, Colorado, records.

3. That the members of the Association have arrived at an agreement to amend the terms of the aforementioned Operation and Easement Agreement, which terms have been reviewed and approved by the Town Attorney and the Town Manager.

4. That the Town of Windsor hereby ratifies, approves and confirms the terms and conditions of the First Amendment to Operation and Easement Agreement (Highland Meadows), a copy of which is attached hereto and made a part hereof.

5. That the Town of Windsor hereby authorizes the Mayor of the Town to execute said First Amendment to Operation and Easement Agreement on behalf of the Town.

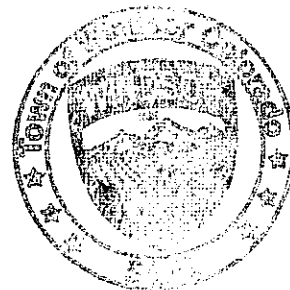
Upon motion duly made, seconded and carried, the foregoing Resolution was adopted this 26th day of September, 2005.

TOWN OF WINDSOR, COLORADO

By Edward M. Stos  
Mayor

ATTEST:

Catherine Kennedy  
Town Clerk



IN WITNESS WHEREOF, the Owners have executed this First Amendment to the Operation and Easement Agreement (Highland Meadows) as of the day and year first above written.

DAYSPRING CHRISTIAN CHURCH,  
a Colorado non-profit corporation

By: Michael A. Maxwell  
Name: Michael A. Maxwell  
Title: President

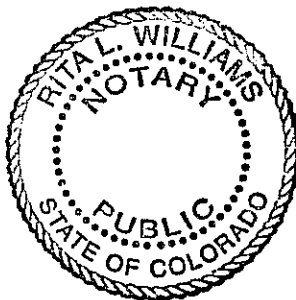
STATE OF COLORADO        )  
  )ss:  
COUNTY OF LARIMER        )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of September, 2005, by Michael A. Maxwell as President of DAYSPRING CHRISTIAN CHURCH, a Colorado non-profit corporation.

Witness my hand and official seal.

My Commission Expires: 10-21-2005

Rita L. Williams  
Notary Public



IN WITNESS WHEREOF, the Owners have executed this First Amendment to the Operation and Easement Agreement (Highland Meadows) as of the day and year first above written.

HILLSIDECOMMERCIAL GROUP, INC.  
a California corporation

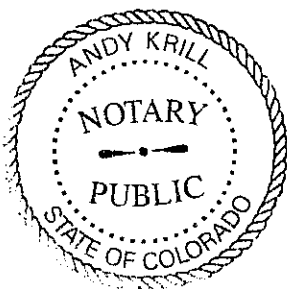
By: Jon A. Turner  
Name: JON A. TURNER  
Title: PRESIDENT

STATE OF COLORADO        )  
  )ss:  
COUNTY OF LARIMER        )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of SEPTEMBER, 2005, by JON A. TURNER as PRESIDENT of HILLSIDE COMMERCIAL GROUP, INC., a California corporation

Witness my hand and official seal.

My Commission Expires: APR 07 2006



Andy Krill  
Notary Public



IN WITNESS WHEREOF, the Owners have executed this First Amendment to the Operation and Easement Agreement (Highland Meadows) as of the day and year first above written.

BETTER BUSINESS BUREAU OF  
NORTHERN COLORADO FOUNDATION  
a Colorado non-profit corporation

By: *Pamela K. King*  
Name: PAMELA K. KING  
Title: PRESIDENT/CEO

STATE OF COLORADO            )  
  )ss:  
COUNTY OF LARIMER         )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of Sept, 2005, by Pamela K. King as President/CEO of BETTER BUSINESS BUREAU OF NORTHERN COLORADO FOUNDATION, a Colorado non-profit corporation.

Witness my hand and official seal.

My Commission Expires: 10.10.05

*Marcia K. Gray*  
Notary Public

